Ontario Human Rights Commission

Annual Report 1986 – 1987

THE ONTARIO HUMAN RIGHTS CODE

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the [illegible] of each person so that each p[illegible] the community and able to co[illegible] ment and well-being o[illegible] the Provin[illegible]

[illegible] as these principles have been confirm- [illegible] o by a number of enactments of the [illegible] nd it is desirable to revise and extend [illegible] ction of human rights in Ontario;

[illegible] er Majesty, by and with the advice and [illegible] Legislative Assembly of the Province [illegible] Ontario, enacts as follows:

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

GREETING:

SALUT:

United Nations
Universal Declaration of Human Rights

All human beings [illegible] born free and equal in dignity [illegible] ghts. They are endowed with [illegible] nd conscience and should [illegible] ds one another in a spirit [illegible]

[illegible] to all the rights [illegible] without distinction of any kind, such as race, colour, sex, language, religion, political or other [illegible]

Everyone has the right to free[illegible] of peaceful assembly and asso[illegible] tion.

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country.

Everyone has the right to work, to free choice of employment, to just [illegible]

-- -----,

88-00189/

ONTARIO HUMAN RIGHTS COMMISSION

ANNUAL REPORT

1986/1987

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June, 1987

The Honourable William Wrye
Minister of Labour
400 University Avenue
14th Floor
Toronto, Ontario
M7A 1T7

Dear Mr. Wrye:

Pursuant to Section 30(1) of the Human Rights Code, 1981, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1986/87 for submission to the Legislative Assembly of Ontario.

Sincerely,

Borden Purcell

Canon Borden Purcell
Chairman

MINISTER'S MESSAGE

As Minister responsible for human rights, I am most grateful for this opportunity to extend greetings through the annual report of the Ontario Human Rights Commission.

This day is an important one in the history of our province, for it marks the 25th anniversary of the enactment of the Human Rights Code.

Human rights are about justice and equity. Justice and equity characterize the community that is Ontario. The Human Rights Code is the public expression of that character.

When the Code was first enacted in 1962, it was the first such statute to be found anywhere in Canada. In the years since, it has undergone two major revisions, the most recent in 1986.

These revisions have reflected the dynamic nature of human rights in Ontario. They have also reflected the community's readiness to adapt its inherent fairness and open-mindedness to contemporary concerns.

The Code and the Commission are vital in our province. But they do not, in and of themselves, constitute the community's recognition of the dignity and worth of every person and its solemn undertaking to provide for equal opportunities and rights without discrimination. That recognition can only be measured by the ways in which each of us who lives and works in Ontario respects and responds to the other, every day.

May we take particular note of that on this day.

William Wrye
Minister

CHAIRMAN'S REMARKS

Respect for human rights is an old tradition in Ontario, but it is a vulnerable and fragile one. In a community as ethnically diverse and multiculturally resplendent as ours, and in economic conditions that encourage self-centredness rather than othermindedness, we must continue to guard against that tradition becoming less cherished, more tarnished.

It is important to remember, however, that ours is a tradition in which we can take pride. Our history is replete with significant reminders of the constructive, if not inspirational, steps taken to forward our goal of equality of opportunity and the protection of human rights for the various groups and individuals that constitute our population.

Ontario was the first jurisdiction in Canada to give formal and public recognition to the moral, social and economic consequences of discrimination by establishing a human rights commission and enacting the Ontario Human Rights Code in June 1962.

The Ontario Human Rights Code is a statute designed to address the problem of discrimination. More importantly, it is a declaration of public policy that emerges from the consensus of the community. Human rights legislation represents the expression of the decent values of the community and provides support by example and by law for better understanding of and respect for these values.

On this, our 25th anniversary, as my second term as Chairman nears an end, I am particularly proud that human rights has advanced so considerably in Ontario over the past few decades, and especially during my nine-year tenure on the Commission.

The Commission has always attempted to be sensitive in responding to the changing needs of our evolving society. Three landmark periods evidence this most vividly. In 1977 the Commission, under the capable leadership of Dr. T.H.B. Symons, conducted the first comprehensive review of the Code since 1962 by travelling throughout the province, receiving deputations and briefs from Ontarians. The resulting report, "Life Together", remains current as a masterly analysis of the philosophical and pragmatic considerations behind human rights law.

Some four years later, on June 15, 1982, 20 years to the day since the enactment of the first Code, the new Human Rights Code was proclaimed, incorporating many of the recommendations of the "Life Together" report. For the first time, people who are physically or mentally handicapped were afforded the full protection of the law, the prohibition against sexual harassment was entrenched, people on public assistance could not be denied accommodation for that reason alone, and those who had received an official pardon for criminal offences were now protected by Ontario's legislation. The Race Relations Division of the Commission was officially created and mandated to inquire into, mediate and resolve community tensions.

These revisions once again ensured that Ontario stood in the forefront of the protection of the rights and dignity of Ontarians.

Six short months ago, in December 1986, the Ontario government further honoured its commitment to social progress by passing Bill 7 - designed to bring Ontario statutes in line with the Canadian Charter of Rights and Freedoms. Among the amendments are a repeal of the sections of the Code that allowed for adult-only buildings and restrictions by sex in athletic activities. Sexual orientation has been added as a prohibited ground and a woman may not be discriminated against because she is, or may become, pregnant. The rights of handicapped persons have been extended with respect to employment and access to premises.

I am privileged to have been part of such an advancement in the protection of human rights. But these rights must be tempered with the assumption of responsibilities by each of us - to uphold, respect and fight for the dignity and worth of our neighbours.

We all have a crucial contribution to make - to ensure that the effective machinery necessary for the protection of the rights of the individual and the community is in place and functioning. We, who devote ourselves to the preservation of justice and equality, are inextricably involved in the process. We must all confront, head on, the menacing and ugly face of hate and persecution. We must work together to ensure that this deprivation of human dignity becomes part of our memory and not part of our destiny.

On this 25th anniversary we are facing, and will continue to bear witness to, many changes and challenges, which we must all be prepared to meet in order to continue fulfilling our goals of equality of opportunity, quality of life, dignity and respect.

I am fortunate to have had the opportunity to work alongside of a dedicated, committed and most able staff. Their courage, devotion and expertise have been truly nonpareil, and I am honoured to have been associated with them.

I express my personal gratitude to our Minister of Labour, the Honourable William Wrye, for his wisdom, unfailing co-operation and support of our endeavours, and offer my thanks to the former Ministers of Labour, Robert Elgie and Russell Ramsay.

It is with regret that we acknowledge the end of the terms of office of Commissioners Aileen Anderson and Lou Alexopoulos, and wish them well in their future endeavours.

On behalf of my colleagues, I would like to extend a warm welcome to our new Commissioners, Reva Devins and Robert Paris, whose experience, expertise and sensitivity to human rights issues will ensure that the work of the Commission will continue to be of the highest calibre.

In closing, I reach out to you, the people of Ontario, to stand side by side, to affirm our similarities and respect our differences, and to dedicate ourselves on this anniversary to people everywhere who suffer injustice and who still have the will to dream of freedom.

THE COMMISSION

Chairman: Canon Borden C. Purcell

Canon Purcell, a member of the Commission since January 1978, is currently serving his second term as Chairman. Born in Athens, Ontario, Canon Purcell left his position as rector of the largest Anglican parish in Ottawa in order to assume his duties as Chairman of the Ontario Human Rights Commission in February 1982. The first clergyman to head such a commission in Ontario, Canon Purcell has planned and convened numerous ecumenical events that include conferences on racism, refugees and other disadvantaged persons. Involved in several international organizations on human rights, Canon Purcell is on the national council of the Canadian Human Rights Foundation and is a member of the Consultative Committee on Human Rights for the Canadian Council of Churches.

Vice-Chairman: R. Lou Ronson

R. Lou Ronson is the recently retired Chairman of the Board of Workwear Corporation of Canada and holds directorships in over 20 business and community organizations. The recipient of numerous humanitarian awards, including the National Human Relations Award - Canadian Council of Christians and Jews, Mr. Ronson was also Chairman of an International Trade Mission sponsored by the Ontario Ministry of Industry and Tourism and the Canada-Israel Chamber of Commerce. He was a delegate to the "UNESCO International Workshop on Racism and Discrimination" in 1971 and is a former national Chairman of the League for Human Rights of B'nai Brith.

Race Relations Commissioner: Dan McIntyre

Appointed to the Commission in January 1986, Mr. McIntyre is a graduate in both business administration and social work. Prior to his becoming Director of the Ontario Region of the Canadian Human Rights Commission in 1982, Mr. McIntyre served as Chief of Community Liaison for that Commission. He has been active in the trade union movement and served as President of Local 70176 of the Public Service Alliance of Canada. Earlier in his career, he worked as a human rights officer, social worker and youth services director in New Brunswick.

Commissioner: Louis Alexopoulos

A scholarship recipient and graduate of the Universities of Wilfrid Laurier (B.B.A.), York (M.B.A.) and Western Ontario (LL.B.), Mr. Alexopoulos was appointed in February 1984 and brought to his role as Commissioner expertise in legal and financial areas. He is Director and Treasurer of the Canadian Paparaon Association - St. Nicholaos, was a founding member of the Hellenic-Canadian Federation of Ontario and the Hellenic-Canadian Law Association and is a member of the Hellenic-Canadian Professional and Businessmen's Association. Mr. Alexopoulos's term expired in February 1987.

Commissioner: S. Aileen Anderson

Appointed to the Commission in February 1984, Ms. Anderson is a real estate agent and has served five consecutive terms as an elected trustee with the Etobicoke Board of Education. She was elected by the Board to be its representative on the Metropolitan Toronto School Board. Ms. Anderson was also a member of the Advisory Committee to the Minister of Education on General Legislative Grants, the Metropolitan Toronto Committee on Race Relations and Policing, and has served on the Etobicoke Planning Council since 1968. Ms. Anderson's term expired in February 1987.

Commissioner: John Bennett

John Bennett resides in Sault Ste. Marie and has been employed by The Algoma Steel Corporation Ltd. since 1950. Actively involved in the trade union movement, Mr. Bennett also serves on the boards of the United Way, Sault College of Applied Arts and Technology, the Canadian Mental Health Association, Plummer Memorial Hospital, Community Futures, Soogoma Industries and the Plummer Foundation.

Commissioner: Leslie Blake-Côté

Leslie Blake-Cote utilizes her varied background in teaching, print and broadcast journalism, consulting and public relations as a Commissioner and as a feature writer for local and national trade magazines and newspapers. As researcher/host of numerous cable television documentaries, she has dealt with human rights issues. Ms. Blake-Cote is also involved in community and volunteer endeavours.

Commissioner: Reva Devins

Appointed to the Commission in February 1987, Ms. Devins completed her undergraduate degree at York University and holds law degrees from Osgoode Hall and Harvard University. She recently served as law clerk to a Justice of the Supreme Court of Canada.

Commissioner: A.J. Diamond

A renowned architect and planner for over 20 years, Jack Diamond has won many national and international awards in both architecture and urban planning. A graduate of the Universities of Capetown, Pennsylvania and Oxford, and a lecturer/professor at a number of universities in Canada and the United States, Mr. Diamond has, among other endeavours, acted as Chairman of the National Capital Commission Design Advisory Committee.

Commissioner: Catherine L. Frazee

Catherine Frazee, currently the Product Standards Coordinator for Esso Petroleum Canada, serves on the Board of the Canadian Paraplegic Association - Ontario Division. She holds membership in People United for Self Help - Ontario and Disabled Women's Network and participates in the Committee on Legal Issues in Psychiatry.

Commissioner: Elizabeth Kishkon

A resident of Windsor, Elizabeth Kishkon was appointed to the Commission in March of 1986. She began a professional career as a political commentator and interview host for the CBC in 1971 while still participating on many boards of various social service agencies. An active participant in community projects and municipal affairs, Ms. Kishkon was a member of Windsor City Council and was ultimately elected as the city's first woman mayor.

Commissioner: Lilian Ma

Appointed to the Commission in March 1986, Lilian Ma is currently a Research Associate, Department of Biochemistry, University of Toronto. Extensively involved in the community, Dr. Ma has held executive and member positions on the Canadian Ethnocultural Council, the Chinese Canadian National Council, the National Organization of Immigrant and Visible Minority Women of Canada and the Council of Chinese Canadians in Ontario. She sits as a member of the Equality Rights Panel as well, which was set up by the Canadian Council on Social Development to administer the federal Court Challenge program.

Commissioner: Robert G. Paris

Newly appointed to the Commission in February 1987, M. Paris is currently Director of the Centre for Legal Translation and Documentation at the University of Ottawa. A graduate of both Laval University and Osgoode Hall, M. Paris was called to the Bar in 1954. He is also a part-time professor in the Faculty of Law, University of Ottawa.

Commissioner: Gene Rheaume

Gene Rheaume was born in the Peace River area of Alberta and graduated from the Universities of Saskatchewan and British Columbia. He was Member of Parliament for the Northwest Territories from 1963 to 1965. Mr. Rheaume is currently self-employed as a consultant on Native affairs. He was formerly the National Chairman of the Native Housing Task Force and is an honorary life member of five Metis, Indian and non-status Indian associations.

ONTARIO HUMAN RIGHTS COMMISSION

25th Anniversary: 1962-1987

Ontario was the first jurisdiction in Canada to enact a comprehensive human rights code in 1962. The Code consolidated all of the anti-discrimination and fair practices statutes passed in the 1940s and '50s. The Ontario Human Rights Commission was established to seek the public's support for, and to create a public understanding and acceptance of, human rights legislation, forward the principle that every person is free and equal in dignity and rights and develop and conduct educational programs designed to eliminate discriminatory practices. A full-time staff was provided to investigate and conciliate complaints of discrimination and to conduct public education activities. The Commission's first major educational project was its official publication Human Relations, the forerunner of the Commission's present quarterly, Affirmation.

The pioneering Ontario Human Rights Code prohibited discrimination in signs and notices, public accommodation, services and facilities, housing with more than six self-contained dwelling units, employment and trade union membership. The protected grounds were race, creed, colour, nationality, ancestry and place of origin.

The Commission Chairman, the Minister of Labour and the President of the Ontario Association of Real Estate Boards signed a Declaration of Fair Housing Practices in 1966, the first such declaration in North America. This included a policy to accept all property listings without reference to any discriminatory grounds. Later that year, a similar pledge was signed between the Commission and the apartment developers' committee of the Urban Development Institute.

In 1966 the Age Discrimination Act was passed to prohibit age discrimination against people between the ages of 40 and 65 in employment. In 1968 a section was added to protect complainants and witnesses from acts of reprisals. The Women's Equal Employment Act followed in 1970, and the Code was amended in 1972 to consolidate the provisions of these Acts.

The Code was further revised in 1972 to prohibit discrimination on the basis of marital status. Also, that year, a section was added to allow for special employment or voluntary affirmative action programs to address systemic discrimination against minority groups and women. Membership in self-governing professions also came under the Commission's jurisdiction. The housing provisions were amended to include any housing accommodation except where the owner, or his or her family, shares a bathroom or kitchen with tenants. In 1972 protection from discrimination on the grounds of sex and marital status was extended to signs and notices, housing, public accommodation, services and facilities. Furthermore, in 1972 the Commission was given the authority to initiate complaints of discrimination.

In 1975 the Commission was reconstituted and changed from a body of public servants to a public body of private citizens, reporting to the Minister of Labour. The Community, Race and Ethnic Relations Unit was established in 1976 to respond to the increasing tension and conflict between racial and ethnic groups in society. The program's objective was to prevent and reduce community tensions and conflicts through education and mediation.

It was in fiscal year 1975/76 that the Commission conducted the first comprehensive review of the Code since its enactment. The 17 public meetings and more than 300 briefs from organizations, agencies and individuals assisted the Commission in understanding the many human rights issues that emerged in the 1960s and early '70s. Its report, Life Together : A Report on Human Rights In Ontario, contained 97 recommendations for how the Code and Commission could be expanded and strengthened to address the new concerns. Many of the recommendations were either implemented as Commission policies or incorporated into an entirely new Code, which was proclaimed as law in 1982.

Prior to the enactment of the new Code, a number of significant developments occurred. In 1978 the Commission established a special Committee on Race and Ethnic Relations and Public Education, comprised of all Commissioners. This Committee analysed the conditions contributing to community problems affecting inter-group relations and took appropriate actions to prevent and reduce tension and conflicts. One of the Committee's activities, which was spearheaded by Canon Borden Purcell, was to contact various religious institutions across Ontario to promote the 30th anniversary of the United Nation's Universal Declaration of Human Rights and to develop human rights education programs in their localities.

A Race Relations Commissioner for the Ontario Human Rights Commission was appointed in 1979 to give greater emphasis and focus to race relations issues. In the same year, the Race Relations Division was created to resolve racial-disputes in the community and to develop long-term policies and educational programs to prevent racial tension and conflicts.

Also, in 1979, a case review panel was instituted to review all settlements reached between the parties to complaints filed under the Code. The panel, which meets twice a month, may either approve the agreement or send the case back to staff for further investigation or conciliation. Previously, Commissioners only reviewed unresolved cases with a view to requesting the appointment of a board of inquiry or dismissing the complaint. The panel ensures that every complainant receives a remedy that reflects the evidence of discrimination that has been gathered and the nature of the injustice suffered. It also ensures that preventive components are built into settlements of cases.

Affirmation, a quarterly newsletter designed to increase public awareness of human rights as well as to highlight Commission achievements and current concerns, began publication in 1980. In 1981 the Commission launched a public education campaign based on the theme "Together We Are Ontario." The thrust of the campaign was that each of us is unique and that if we all respect one another, we make life rich, fuller and varied for everyone.

In June 1981 the Commission hosted the annual conference of the Canadian Association of Statutory Human Rights Agencies, which was held in Windsor. The theme of the four-day conference was the International Year of the Disabled.

The Commission celebrated its 20th anniversary in 1982. On June 15, 1982 the new Ontario Human Rights Code was proclaimed as law, exactly 20 years to the day since the enactment of the original Code. The extended grounds and broadened mandate of protection once again placed Ontario in the forefront of human rights legislation. The new Code prohibited discrimination with respect to employment, accommodation, contracts, goods, services and facilities, membership in unions, vocational associations, self-governing professions and employment agencies. The prohibited grounds included race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status, handicap, receipt of public assistance and record of offences. It was the first legislation in Canada to prohibit, explicitly, harassment on any ground and, in particular, unwelcome sexual advances and solicitations. The new Code also expressly prohibited practices that are not discriminatory on their face but which have an adverse impact upon a particular protected group. Age protection was expanded to include ages 18 - 65 in employment and 18 and over in all other social areas covered by the Code. The new Code was given primacy over all other legislation. This clause came into effect on June 15, 1984.

The most significant addition to the new Code was the prohibition against discrimination on the ground of handicap, which is defined as any real or perceived physical handicap, mental retardation or impairment, learning disability or a mental disorder. Complaints based on handicap soon came to exceed the number of complaints on any other single ground.

December 10, 1983 marked the 35th anniversary of the United Nations Universal Declaration of Human Rights. The Commission paid tribute by producing 15,000 Human Rights "Scrolls", which were distributed to schools, employers, unions, mayors and community organizations. The Commission participated in the conference of the National Coalition for Human Rights in Ottawa to celebrate December 10. Earlier in the year, Canon Purcell represented Ontario at the United Nations in New York, when Canada's Sixth Periodic Report regarding the International Convention on the Elimination of All Forms of Racial Discrimination was reviewed.

The Commission celebrated Ontario's Bicentennial in 1984. To mark the occasion, the Commission sponsored a play called New Canadian Kid, which was performed before over 5,000 school children during the year. Canon Purcell travelled to the Soviet Union in 1984 with a delegation of prominent Canadians, including the Honourable Robert Nixon. The delegation visited "Refusenik" (Russian Jews who have been denied exit visas) communities in Moscow, Leningrad and Riga.

In 1985 the Commission hosted a major conference entitled "The Merit Principle in Action". It was attended by 145 chief executive officers, vice-presidents and other senior officials of major Ontario-based corporations. Commission activities for the year 1986/87 are included in this annual report.

Legal Highlights

The Commission's 20th Anniversary Annual Report for fiscal year 1981/82 highlighted a number of landmark legal rulings that have shaped the interpretation of the Ontario Human Rights Code. In the past five years, a number of important board of inquiry and court decisions have been rendered, affecting both the interpretation and application of the Code.

The Supreme Court of Canada addressed several key issues with respect to discrimination in employment in Ontario Human Rights Commission, O'Malley (Vincent) and Simpsons-Sears Ltd. The case involved a conflict between a store rule requiring sales clerks to work on Saturdays and Ms. O'Malley's religious observance, which prohibited work on the Sabbath. Ms. O'Malley filed a complaint alleging discrimination in employment, contrary to the Code.

The board of inquiry found that the employer had taken reasonable steps to accommodate Ms. O'Malley's religious beliefs by offering her part-time employment and it dismissed the complaint.

On an appeal to the Divisional Court of the Supreme Court of Ontario, it was held that intent is an essential element of discrimination and that as Simpsons-Sears had no intent to discriminate, there was no contravention of the Code. This decision was upheld by the Ontario Court of Appeal.

The Supreme Court of Canada overturned this decision, holding that the courts below had erred in finding an intent to discriminate to be a necessary element of proof. The Supreme Court applied the doctrine of constructive or systemic discrimination and held that an employment rule, honestly made for sound economic and business reasons and equally applicable to all of whom it is intended to apply, may, nevertheless, be discriminatory if it affects a person or persons differently from others to whom it may apply. In this kind of situation, an employer has a duty of reasonable accommodation; in other words, to take such steps as may be reasonable to accommodate the employee without undue interference in the operation of the business and without undue expense to the employer.

In another significant decision, the Supreme Court of Canada held, in the case of Ontario Human Rights Commission et al. vs Borough of Etobicoke, that a provision in a collective agreement imposing mandatory retirement at the age of 60 constituted discrimination in employment based on age. The Supreme Court ruled that such discrimination in employment is permissible under the Code if age is a bona fide occupational qualification and requirement for the position. To be valid, such a limitation must be imposed honestly, in good faith and in the sincerely held belief that it is imposed in the interests of the adequate performance of the job. The limitation will be in violation of the Code if it is imposed for ulterior reasons aimed at circumventing the provisions of the Code. The Supreme Court held that the onus to show that the limitation is warranted rests on the employer and can be satisfied only by the presentation of evidence linking the limitation to the specific duties and nature of the job in question.

The Supreme Court also held that the Code expresses the public policy in Ontario and that parties may not contract out of its provisions. This is so even where the contract in question arises out of collective bargaining.

In Cindy Cameron v. Nel-Gor Castle Nursing Home and Marlene Nelson, Ms. Cameron was denied a job as a nurse's aide because of a deformity in her left hand. It was argued that she would be unable to do the lifting required in that position and might pose a risk to the elderly patients in the nursing home.

The board of inquiry applied the decision in Ontario Human Rights Commission et al. v. Borough of Etobicoke and held that an absence of malice is not a defence to an allegation of discrimination under the Code. To rely upon the defence that the individual could not perform the essential duties of the job pursuant to section 16(1)(b) of the Code, the employer must establish, on an objective basis and by a preponderance of evidence, that the individual cannot fulfil the essential duties of the job. It is not sufficient for an employer to form an impression, even one without an improper motive, that the individual cannot perform the essential duties of the job. The board of inquiry found that the nursing home did not have the objective evidence necessary to establish a defence under section 16(1)(b) of the Code and that evidence adduced by and on behalf of Ms. Cameron established that she could lift patients in a safe manner. This decision was affirmed by the Divisional Court of the Ontario Court of Appeal, and the respondent's application for leave to appeal to the Ontario Court of Appeal was denied.

It should be noted that the recent amendments to section 16 of the Code will come into force on a day to be named by proclamation of the Lieutenant-Governor. Among the amendments are the repeal of section 16(1)(a) of the Code and the imposition of a statutory duty of reasonable accommodation without undue hardship.

Important legal principles have also arisen from decisions rendered by boards of inquiry. In Sucha Singh Dhillon v. F.W. Woolworth Company, an employee brought an allegation of racial harassment in the workplace. The board held that the atmosphere of the workplace is a term or condition of employment, much like an employee's rate of pay. The board found that where the atmosphere of the workplace is poisoned by racial slurs, there exists a duty on the employer to take reasonable steps to eradicate this form of discrimination.

An important decision regarding sexual harassment was handed down in the case of Edilma Olarte et al. v. Rafael De Filippis and Commodore Business Machines Ltd. Mr. De Filippis, the foreman, was found to have engaged in acts of sexual harassment against six female employees and was held personally liable for these actions. His employer was also found to be personally liable for the acts of sexual harassment committed by Mr. De Filippis because Mr. De Filippis was part of the "directing mind" of the employer with authority to hire, fire and discipline employees. This concept is known as the organic theory of corporate responsibility.

An appeal of this decision to the Supreme Court of Ontario was rejected. The Court found that the Code is valid provincial legislation and empowers boards of inquiry to award damages. The Court upheld the decision of the board to admit similar fact and hearsay evidence, citing section 15(1) of the Statutory Powers Procedure Act.

The Court also rejected arguments that sections 7 and 11 of the Charter of Rights and Freedoms were violated. The Court held that being found to be in violation of the Code does not fall within section 11(d) of the Charter, which relates to being charged with an offence. Section 7 of the Charter was inapplicable because there was no denial of natural justice.

The first board of inquiry decision to deal with the prohibition contained in section 4(2) of the Code against harassment on the basis of handicap was rendered in March 1987 in the case of Boehm v. National System of Baking, Limited et al. Mr. Boehm's supervisor was found to have made derogatory remarks to him regarding his handicap and had singled him out for disciplinary sanctions because of his handicap. The company was held personally liable on the organic theory of corporate responsibility for the acts of harassment because the supervisor was part of management and thus his acts were the acts of the company itself.

Summaries of other significant board of inquiry decisions handed down in 1986/87 may be found elsewhere in this report.

The equality rights contained in the Charter of Rights and Freedoms came into effect on April 17, 1985. Two decisions have been rendered involving challenges of the Code based on the equality provisions of the Charter.

In one case, the Ontario Court of Appeal ruled that section 19(2) of the Code was inconsistent with section 15(1) of the Charter and resulted in adverse effect discrimination against females. It could not, therefore, not be defended as a reasonable limitation under section 1 of the Charter. Section 19(2) of the Code was repealed in December 1986.

The issue of mandatory retirement was raised in a challenge of section 9(a) of the Code, which defines age to mean "an age that is eighteen years or more or less than sixty-five years." The High Court of Justice of the Supreme Court of Ontario held that section 9(1) of the Code is inconsistent with section 15(1) of the Charter to the extent that it defines "age" to be less than 65 years. The Court ruled, however, that at the present time and in the context of the contractual relations proven, section

9(a) is a reasonable limit demonstrably justified in a free and democratic society under section 1 of the Charter.

While the Commission can be proud of its accomplishments, we cannot rest on our laurels. There is still much discrimination that must be addressed. The Code was amended in December 1986 to bring its provisions in line with the Charter of Rights and Freedoms. The amendments will allow the Commission to deal with discrimination in the following areas: sexual orientation, pregnancy, adult-only residences, age discrimination against 16- and 17-year-old persons in accommodation, sex-discrimination in sports and lack of physical access for people with a handicap. However, no human rights legislation or commission can create a society of equality of opportunity on its own. Such a society must be reinforced by positive attitudes and action on the part of institutions, community organizations and concerned individuals. It is with this view that we look forward with great optimism to our next 25 years.

COMMISSION ACTIVITIES

1986/87

The aim of the Ontario Human Rights Commission is to create, at the community level, a climate of understanding and mutual respect in which all of our people are made to feel free and equal in dignity and rights and that each has a rich contribution to make to the well-being and development of our province. The Commission promotes the public policy of Ontario, which recognizes the worth of every person and ensures that equality of opportunity is provided without discrimination.

The statutory functions of the Commission are to:

- forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;
- promote an understanding and acceptance of, and compliance with, the Human Rights Code;
- recommend for consideration special programs designed to relieve hardship or economic disadvantage, or to assist disadvantaged persons or groups to achieve equal opportunity;
- develop and conduct programs of public information, education and research designed to eliminate discriminatory practices;
- examine and review any statute or regulation and any program or policy made by or under a statute, and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of this Act;
- inquire into incidents of, and conditions leading to, tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;
- initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;
- promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination.

To accomplish its goals, the Commission engages in a wide variety of activities and meets monthly to discuss and take action with respect to policy issues. It also deliberates on all complaints of discrimination in which the parties have not reached a conciliated settlement. A request is then made to the Minister of Labour to appoint or not appoint a board of inquiry.

A case review panel of three Commissioners reviews all settled cases to ensure that the settlements are satisfactory and that the investigations and conciliations have been conducted properly. This Commission panel also grants or denies requests for exemptions to the Code's provisions, makes decisions as to whether or not to file Commission initiated complaints and reviews and approves special programs.

In an effort to heighten public awareness of rights and responsibilities under the Code, the Commission places a strong emphasis on public education activities. From its daily experience, the Commission has become increasingly aware that there is an ongoing need to educate groups and individuals about the provisions of the Code and to reduce the prejudice and stereotyping that lead to discrimination.

During fiscal year 1986/87, the Chairman, Canon Borden Purcell, was actively involved in approximately 200 events throughout Ontario concerning human rights and public education. This included speaking engagements, conferences, community functions and consultations that took place in Toronto, Kitchener, Barrie, Kingston, Smiths Falls, Brockville and Ottawa. In addition, he was interviewed many times by the print and broadcast media.

The Commission continued to hold consultations with senior officials of major institutions, organizations and corporations, imparting information on the provisions of the Code and assisting in the development of human rights policies and proactive programs. Close contact was maintained with community, business and labour leaders, law enforcement agencies, media, educational and religious institutions, school boards, health and social service agencies, transit commissions and all levels of government. As well, the Commission's staff continued its extensive educational program and conducted seminars, consultations and conferences.

During the monthly meetings of the Commission, a number of individuals and organizational representatives were invited to exchange information and make presentations that enabled the Commission to be kept abreast of current human rights issues and concerns as well as matters of public policy. These discussions assist the Commission in its development of policies and programs. Through this format, mutual goals are recognized, as well as the need for co-operation in achieving them.

Affirmation

Affirmation is the Commission's quarterly publication. It contains feature stories, personal profiles, examples of significant cases and settlements, decisions of Boards of Inquiry, editorials and articles on important human rights topics. Articles are written by staff, Commissioners and members of the public and include a number written in French. Affirmation has a circulation of 10,000, including employers, schools, labour, community organizations and members of the general public.

The June 1986 issue featured a major article on the Supreme Court of Canada decision in O'Malley and Simpsons Sears. This decision determined that the effect of a policy or practice, rather than the intent to discriminate, is the determinative factor in deciding whether or not discrimination occurred. Other articles focused on transportation issues affecting people with a handicap, age discrimination and racial harassment.

September's issue included features on discrimination against Sikhs, racism in the workplace, issues affecting young people from South Asian countries, employment-related medical examinations and the case of Justine Blainey and the Ontario Hockey Association. The Chairman's Corner focused on international human rights issues, including South Africa's apartheid policy.

Affirmation's December issue featured an article on the problem of sexual harassment against waitresses. It also paid tribute to the 38th anniversary of the United Nations Declaration of Human Rights.

National and International Responsibilities

Since Canon Purcell is the current President of the Canadian Association of Statutory Human Rights Agencies (CASHRA) the Ontario Human Rights Commission played host to the 15th Annual CASHRA Conference in 1987. The conference theme was Human Rights : The Challenge Continues, and the event was attended by more than 100 senior officials from human rights commissions across Canada.

The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the Covenant on Civil and Political Rights were adopted by the United Nations General Assembly on December 16, 1966. Ontario gave its written acceptance of these two Covenants in 1972, prior to Canada's ratification of both in 1976. In ratifying these agreements, Canada recognizes its obligations under the documents and confirms its commitment to the elimination of discrimination and the promotion of equality of opportunity.

A Federal-Provincial-Territorial Conference of Ministers Responsible for Human Rights, held in 1975, created a new national organization called the Continuing Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. This Committee, which meets at least twice a year, was established to provide and maintain the liaison and consultation necessary for Canada to meet the obligations inherent in signing the International Covenants. Ontario has been an active participant on the Continuing Committee since its inception.

The Continuing Committee has co-ordinated several conferences of ministers responsible for human rights, modelled after the initial one held in 1975, at which ministers from all jurisdictions in Canada review and discuss current issues and initiatives in the area of human rights. This forum enables the members to gain a common understanding of problems and concerns in the different regions of Canada and to keep abreast of Canada's role in addressing human rights issues in the international arena. In addition, the ministers propose ways in which human rights programs in Canada can be strengthened to ensure that they conform with the principles enunciated in the International Covenants and the Canadian Charter of Rights and Freedoms.

During the year the Chairman participated in a number of activities relating to the protection of human rights throughout the world. He is a founding member of the Inter-Faith Council on Soviet Jewry and, in this connection, participated in a number of public events designed to bring more attention to the continuing injustice experienced by Jews in the Soviet Union.

On the steps of the Legislature at Queen's Park in Toronto, Commission officials joined with representatives of all three political parties and religious and community leaders in a ceremony dedicated to the "refusenik" community in the Soviet Union. The event, which took place on International Human Rights Day, was sponsored by the Legislature's Committee for Soviet Jewry and the Canadian Jewish Congress's Committee for Soviet Jewry.

During the year, the Commission passed a resolution and issued a press release condemning the policy of apartheid in South Africa and supporting the governments of Ontario and Canada in their actions against apartheid.

United Nations Declaration of Human Rights - 38th Anniversary

December 10, 1986 marked the 38th anniversary of the United Nations Universal Declaration of Human Rights, whose principles form an integral part of the preamble to the Human Rights Code. The adoption of the Declaration was particularly charged with excitement because, for the first time, nations of the world spoke with one voice to proclaim the fundamental principles of human rights. The Declaration serves not only as an inspirational tribute to human values but also as a commitment to the furtherance of universal social harmony.

In Ottawa the Commission joined in a celebration with the Canadian and Quebec Human Rights Commissions. Stephen Lewis, Canada's ambassador to the United Nations, was the keynote speaker as over 150 representatives of government, institutions and community organizations came together to mark the occasion.

Representatives of the Commission addressed and participated in a gathering of officials representing government, corporations, the educational sector and community leaders in Sarnia on December 10. The event was organized by the Sarnia-Lambton Human Rights Committee.

The Chairman celebrated International Human Rights Day in Bermuda, where he was the keynote speaker at two major events. The Chairman was also featured several times in interviews with the Bermuda media. During the brief visit, he also held consultations with the Bermuda Human Rights Commission and the Minister Responsible for Human Rights.

LEGAL DEVELOPMENTS

1986/87

Introduction

In 1986/87 there was a significant increase in the number of cases decided by both boards of inquiry and the courts. This section includes a summary of some of those decisions that have addressed significant legal issues and principles. Also included are summaries of two cases decided under the Canadian Charter of Rights and Freedoms concerning the constitutional validity of certain provisions of the Code. As well, this section lists the amendments to the Code, which received Royal Assent in 1986 as part of the Equality Rights Statute Law Amendment Act.

The Ontario Human Rights Commission has three permanent counsel. Generally, representation at boards of inquiry and before the courts is provided, in part, by the Commission's counsel and by counsel from the Crown Law Office-Civil, Ministry of the Attorney-General. In addition to providing the Commission and its staff with legal advice and direction, counsel are often requested by community groups and organizations to participate in public educational activities. In the past year, counsel have participated in lectures, presentations and mock hearings for numerous organizations, including the Law Society of Upper Canada, the Canadian Auto Workers, the City of Toronto Centretown Program, the Organization of Counsel for Children's Aid Societies in Ontario and law schools. Counsel have also participated as members of various committees and task forces.

Decisions

The first judicial decision to interpret the Commission's function with respect to the approval of settlements under section 42 of the Code was released in February 1987. Section 42 provides that where a settlement of a complaint is agreed to in writing, signed by the parties and approved by the Commission, the settlement is binding upon the parties, and a breach of the settlement is grounds for a complaint. In the case of Consumers' Distributing Company Ltd. and the Ontario Human Rights Commission, Ghiansaroop Persaud et al., the complainant, the Company and the Union had negotiated a written settlement of a grievance that called for Mr. Persaud, the grievor, to withdraw his human rights complaint subject to approval by the Commission.

Shortly after the agreement had been signed by the parties, the complainant requested the Commission not to approve it, alleging that he had signed it under duress. The Commission considered the matter under section 42 of the Code and refused to approve the settlement.

The Company brought an Application for Judicial Review which was heard by the Supreme Court of Ontario (Divisional Court). The company claimed that having regard to section 42 of the Code, the Commission was obliged to approve the agreement or to hold a hearing with a view to ascertaining whether the complainant signed the agreement under duress; and if it found that he did not sign it under duress, to approve it. It was the Company's submission that without proof of duress affecting the complainant's decision to sign the agreement, the Commission was under the same legal duty as a court to apply the common law to enforcement of settlements made between parties.

The Court held that the Commission was under no obligation to approve the settlement. The Court noted that a decision to approve a settlement under section 42 requires the Commission to take into account the promotion of the principles of the Code. These principles are reflected in the functions of the Commission under section 28. Section 28 imposes on the Commission a broad, complex and subtle statutory mandate. The Court noted that those principles are much broader in scope than would be engaged by the mere resolution of the simple issue of whether the complainant was under duress when he signed the agreement. It was also noted that if the Commission limited itself to the issue of duress, it would be permitting others to usurp the statutory discretion of the Commission.

The Court held that in the Commission's deliberations it is engaged in administrative functions and hence is subject to a duty to observe procedural fairness. The Application for Judicial Review was dismissed. The Company's application for leave to appeal from this decision to the Court of Appeal was not granted.

In Armbro Holding Ltd. v. Purcell, the Supreme Court of Ontario was asked by the Company to make an order prohibiting the Commission from continuing its investigation of a complaint filed by Mr. Rossignol.

Mr. Rossignol's complaint alleged that the termination of his employment was discriminatory on the basis of age. Prior to filing his complaint with the Commission, Mr. Rossignol commenced a civil action against Armbro Holdings Ltd. for damages for wrongful dismissal. The Company brought an Application for Judicial Review and sought a ruling that the Commission had no jurisdiction to investigate the complaint when substantially the same issues were the subject of the civil action in the Supreme Court. The Court dismissed the application on the basis that the legislature has given primary, and, in many respects, exclusive, jurisdiction to the Commission, subject to very wide rights of appeal and, therefore, it would not be a proper exercise of its discretion if it were to make an order prohibiting the Commission from continuing with its investigation. This decision was released in May 1986.

In an appeal from a board of inquiry decision in the Tabar and West End Construction case, the Supreme Court of Ontario (Divisional Court) held that the Limitations Act applies to complaints filed under the Code. Section 45(1)(h) of the Limitations Act sets a two-year limitation period. The Court found that Mr. Tabar's complaint was barred because the facts upon which his complaint was based occurred more than two years before the complaint was filed. The Commission has filed an application for leave to appeal from this decision.

The Annual Report for fiscal year 1985/86 contained a summary of the decision of the board of inquiry in the complaint of Michael Bates against the Zurich Insurance Company. The board of inquiry found that the insurance company's automobile driver classifications of unmarried drivers under 25 contravened the Code and did not fall within the provisions of section 21. That section provides that rights under sections 1 and 3 of the Code are not infringed where a contract of automobile insurance makes a distinction on reasonable and bona fide grounds because of age, sex, marital status, family status or handicap. The Zurich Insurance Company appealed from this decision to the Supreme Court of Ontario (Divisional Court). The Court allowed the appeal and directed that the board of inquiry decision be set aside. The board was directed to decide that the automobile driver classification for unmarried male drivers under 25 does not contravene the Code as such classification differentiation is based on reasonable and bona fide grounds within the meaning of section 21 of the Code, which allows certain distinctions in insurance on the grounds of age, sex, marital status, family status or handicap. The Commission has filed an application for leave to appeal from this decision. A central issue is the interpretation to be placed on section 21 of the Code and, in particular, the meaning of the words "reasonable and bona fide grounds."

In the complaint of Syd Brown against the Waterloo Board of Commissioners of Police, a board of inquiry ruled in an interim decision that an employment relationship within the meaning and scope of the Code exists between a police officer and a Board of Police Commissioners. In that case, counsel for the respondent made preliminary submissions to end the proceeding for lack of jurisdiction on the basis that there was no employment relationship as contemplated by section 4 of the Code. The respondent argued that the complainant was the holder of a public office rather than an employee.

The board of inquiry ruled that it had jurisdiction to proceed with the inquiry and noted that it would be flying in the face of the direct authority of the Divisional Court if it were to conclude that the relationship of employment required by section 4 of the Code did not exist between the complainant and the respondent.

A significant ruling on the issue of damages was made by the board of inquiry in the hearing of a complaint filed by Patricia Whitehead against Servodyne Canada Ltd. and Mr. Kevin Dooling. In the case, the board held that sexual discrimination was a material element in the decision to dismiss the complainant and awarded her $34,382 in damages. The board held that the usual measure of economic loss in contract law for wrongful dismissal — lost wages during a period of reasonable notice — is not the correct measure to compensate an aggrieved complainant under the Code. If it were, the board noted that "an absurd situation would exist: an employer, by refusing to hire, let us say, black people or women, would commit a breach of the Code, but by dismissing them with sufficient notice once they became employees, would not commit a breach!" Accordingly, the board ruled that the remedy available under the Code must not be limited to recovery for wrongful dismissal at common law.

The board was of the view that an award of damages should be on the same basis as reinstatement — to place the employee in the same position as if the contract had not been broken by the employer. The board noted that this poses a difficult question to be decided, namely, how far into the future might the complainant have continued to work for the Company. In the case at hand, the issue did not have to be addressed because the Company had closed its operations. Under the circumstances, the board found that it was reasonable, indeed, highly likely, that the complainant would have continued to work for the Company until it closed its doors, and, therefore, she was entitled to compensation equal to the salary she would have earned until that time. The board noted that any award of compensation would remain subject to the complainant acting reasonably to mitigate her losses, and also to the deduction of earnings from any new employment.

In March 1987 the Commission participated in the hearing of an application for directions in the Supreme Court of Ontario brought by the Trustee of the Leonard Foundation Trust with respect to the legality of the scholarships set up by Trust. The Trust excludes from the scholarship "all who are not Christians of the White Race, all who are not of British Nationality or of British Parentage, and all who owe allegiance to any Foreign Government, Prince, Pope or Pontentate, or who recognize any such authority, temporal or spiritual." The Trust also contains a number of recitals, including one that states that "the Settlor believes that the White Race is, as a whole, best qualified by nature to be entrusted with the development of civilization and the general progress of the World along the best lines."

The Court has reserved its decision.

Charter Cases

As stated in the 1984/85 Annual Report, the coming into force of the equality rights provisions of the Canadian Charter of Rights and Freedoms on April 17, 1985 has resulted in court challenges of the constitutional validity of certain provisions of the Code, which allow for mandatory retirement at age 65 (s.9(a)) and participation in athletic activities to be restricted to persons of the same sex (s.19(2)). With respect to these provisions, two significant decisions have been released over the past year.

The case of Justine Blainey concerned a young woman who, at the age of 12 years, wanted to play hockey for a team in the Metro Toronto Hockey League (MTHL). Regulation 250 of the Ontario Hockey Association (OHA) restricted eligibility for membership to male persons. Justine was therefore ruled ineligible for membership in the OHA and denied the opportunity to become a member of the team. In the result, she was prohibited from playing on the team of her choice because of her sex. The Commission was unable to deal with her complaint because of section 19(2) of the Code. Justine therefore challenged the constitutional validity of that provision in the courts.

In September 1985 the Supreme Court of Ontario ruled that section 19(2) contravened section 15(1) of the Charter, but that the exclusion of Justine Blainey was demonstrably justified in a free and democratic society and did not infringe the Canadian Charter of Rights and Freedoms.

An appeal from the decision of the Supreme Court of Ontario was taken to the Ontario Court of Appeal. On April 17, 1986 the Court of Appeal (Finlayson J.A. dissenting) ruled that section 19(2) of the Code denied Justine Blainey the right to equal treatment and the equal benefit of the Code because of her sex and, therefore, was unconstitutional and of no force and effect. The Court found that section 19(2) was inconsistent with section 15(1) of the Charter and could not be defended as a reasonable limit under section 1 of the Charter. The Court also noted that there was no evidence that males were being denied the right to full membership and participation in athletic organizations. Therefore, the Court was of the view that section 19(2) resulted also in adverse effect discrimination against females. Since the Court declared section 19(2) of the Code to be unconstitutional, Justine Blainey was able to pursue her complaint before the Human Rights Commission.

An application for leave to appeal from the decision of the Court of Appeal was dismissed by the Supreme Court of Canada.

From a procedural perspective, Mr. Justice Dubin in the Blainey case commented that normally, counsel for a tribunal, where its enabling statutory authority is under attack, supports the jurisdiction conferred upon it by its enabling statute or submits its rights to the Court. However, he observed that it is well known that with the introduction of section 15(1) of the Charter, all branches of government are giving close scrutiny to legislation previously enacted with a view to satisfying themselves that it is now consistent with the Charter. Mr. Justice Dubin concluded that that study had obviously been undertaken by the Human Rights Commission and, under such circumstances, it was quite appropriate for counsel to provide the benefit of that review to the Court.

The issue of mandatory retirement at the age of 65 was addressed by the High Court of Justice of the Supreme Court of Ontario in the McKinney decision, which was released on October 15, 1986. In that case a number of professors and a librarian who were facing mandatory retirement because they had reached 65 brought applications against the universities that employed them for an order declaring that section 9(1)(a) of the Code was inconsistent with section 15(1) of the Canadian Charter of Rights and Freedoms and, to the extent of the inconsistency, was of no force and effect. Section 9(1)(a) defines "age" with respect to employment under section 4(1) of the Code, to mean "an age that is eighteen years or more and less than sixty-five years."

On the issue of the constitutional validity of section 9(1)(a) of the Code, the Court was of the view that the provision is inconsistent with section 15(1) of the Charter to the extent that it defines "age" to be less than 65 years. However, the Court held that at the present time and in the context of the contractual relationships proven, section 9(1)(a) constitutes a reasonable limit that is demonstrably justified in a free and democratic society under section 1 of the Charter. The applications were dismissed. The decision is being appealed.

Amendments

In the past year, a number of provisions in the Code have been amended or repealed as a result of the Equality Rights Statute Law Amendment Act. The purpose of that Act was to amend certain Ontario statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms. The amendments to the Code are set out below.

The following amendments became law on December 18, 1986:

- Sexual orientation has been added as a ground in sections 1, 2(1), 3, 4(1) and 5.

- Section 9 has been amended to include: "the right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant."

- Section 3(a) has been amended to provide:

  (1) Every sixteen- or seventeen-year-old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

  (2) A contract for accommodation entered into by a sixteen- or seventeen-year-old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old.

- Section 19(2), which provided that restriction of membership in an athletic organization or participation in an athletic activity could be restricted to members of the same sex, has been repealed.

- Section 20(3), which provided that the Code did not apply in situations of discrimination on the basis of marital status with respect to the occupancy of residential accommodation, has also been repealed. Similarly, section 20(4), which provided that the Code did not apply in situations of discrimination on the basis of family status with respect to the occupancy of residential accommodation, has been repealed.

- Section 47(a), which set out the regulation-making power of the Lieutenant-Governor in Council, has been amended to allow for regulations prescribing standards for assessing what is undue hardship for the purposes of sections 10, 16 or 23.

The following amendments will come into force on a day to be named by proclamation of the Lieutenant-Governor:

- Section 10 will be repealed and the following substituted:

  10.—(1) A right of a person under Part 1 is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

  (a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or

  (b) it is declared in this Act, other than in section 16, that to discriminate because of such ground is not an infringement of a right.

  (2) The Commission, a board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

  (3) The Commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

- Subsection 16(1) will be repealed and the following substituted:

  (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap.

- Section 16 will be amended by adding the following subsections:

(1a) The Commission, a board of inquiry or a court shall not find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

(1b) The Commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

- Subsection 16(2) will be amended by striking out "the provision of access or amenities or as to" in the fifth and sixth lines.

- Section 23 will be amended by adding thereto the following subsections:

(2) The Commission, a board of inquiry or a court shall not find that a qualification under clause (1)(b) is reasonable and bona fide unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

(3) The Commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

- Subsections 40(2) and (3) will be repealed.

ROLE AND ACTIVITIES OF THE

RACE RELATIONS DIVISION

1986/87

Introduction

Fiscal year 1986/87 signalled a new way of thinking about race relations in our communities. People recognized the social and economic benefits to be derived in a province as diverse as Ontario by ensuring that all members of our communities are welcome and assured of full participation. Throughout Ontario, this message was repeated by different groups and in various regions; if this province is to continue to prosper by attracting the skills and investment of people from around the world, there must be racial harmony and fairness to all.

The work of the Race Relations Division, in partnership with the community, has carried that message forward and assisted others to put it into practice. The Division was able to expand its service by assigning four new regional consultants to London, Kingston, Sudbury and Kenora in addition to the existing regional consultants in Windsor, Hamilton and Ottawa.

The Division's statutory mandate under the Ontario Human Rights Code has been, in part:

> to inquire into incidents of and conditions leading or tending to lead to tensions or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;
>
> to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;
>
> to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;

On May 28, 1986 Premier Peterson officially proclaimed the new Ontario Policy on Race Relations, which states in part that:

> The Race Relations Division of the Ontario Human Rights Commission will develop policies and programs to promote harmonious race relations in this province. In particular, it will promote and evaluate activities on racial issues by the Ontario government, its agencies and the private sector to assist in the achievement of this goal.

Consistent with the principles outlined in the Race Relations Policy, the Division has adopted a proactive strategy to ensure that institutions such as school boards, municipal governments, employers, unions and social service organizations are provided with technical assistance to develop and implement their own race relations policies and programs. This approach recognizes the need for all institutions in Ontario to assume responsibility for promoting harmonious race relations and the equitable treatment of minorities in employment and the provision of services.

The success of these institutions, whether in profit margins or quality of service, will be enhanced by their ability to incorporate racial equality principles into their operations. Therefore, in 1986/87, the Division placed increased emphasis on employment equity, education equity and service equity. It also maintained close contact with community-based organizations to ensure that their race relations issues were addressed and that their views and expertise were taken into consideration in our work.

In addition, the Division has increased its consulting role with Ontario government ministries and particularly with the Cabinet Committee on Race Relations. This is in recognition of the pivotal role that individual ministries can play in implementing the government's Race Relations policy.

Throughout the province, outreach to Native people has also increased to ensure that race relations issues, particularly in urban centres, were being addressed. At the same time, the Division has placed an emphasis on the special needs of visible minority women and youth who face significant barriers in achieving equality of opportunity. Finally, the Division increased its work in the area of policy and research development, including contact with other provinces and countries to collect information and share experiences.

Regional Activities

In the summer of 1986 the Division added four new regional race relations consultants. In addition to existing positions in Ottawa, Hamilton and Windsor, the Division added consultants in Kenora, Sudbury, London and Kingston. This staff enrichment allowed the Division to hold more institutional and community consultations; undertake new proactive projects; identify and respond to a greater number of racial incidents; and develop profiles identifying race relations issues in each region of the province. The Division was subsequently able to provide a more comprehensive and co-ordinated service throughout the province.

East

The Division co-sponsored a seminar entitled "Promoting Accessible Health and Social Services" for approximately 50 senior health and social service agency managers in Ottawa. The goal of the seminar was to sensitize participants to the changing racial composition of Ottawa's population, the barriers facing minorities in the health and social service sectors and possible policies and practices which agencies can adopt to serve their clients better. The seminar also attracted new members to ACCESS (Advisory Committee on Ethnic Social Services) which co-sponsored the seminar with the Division.

Division staff organized a series of consultations in Ottawa conducted by the Race Relations Commissioner. Consultations were held with the Directors of Education of the Carleton Board of Education and the Ottawa Board of Education, the Ottawa

Police Force, the Mayor of Ottawa, the Advisory Committee on Visible Minorities (City of Ottawa), minority women's groups, the Canadian Human Rights Commission and Multiculturalism Canada.

A conference entitled "Achieving Equality for Ethnic and Visible Minorities" was organized with the National Capital Alliance on Race Relations and the Ottawa-Carleton Immigrant Service Organization. The focus of the conference, which was held in two sessions covering two and a half days, was to increase the awareness of community members to human rights legislation and to examine community and legal strategies to promote equality.

The Division also co-sponsored three half-day race-related training sessions for members of the Committee for Immigrant Services in Eastern Ontario (CISEO). CISEO is an umbrella organization made up of staff members of immigrant aid services in Eastern Ontario.

In the summer of 1986 the Division participated in the Multicultural, Multiracial Leadership Camp held by the Ottawa Board of Education and five other Eastern Ontario Boards of Education. Division staff helped plan and deliver the camp's program. In addition, the Division co-sponsored a one-day follow-up seminar six months later. At this seminar, teachers and students representing each participating school reported on race relations initiatives they have undertaken since the camp. A planning session was then held to determine ways to improve the program for next year's camp.

The Division helped plan and organize a seminar for the Ethiopian community in Ottawa. The title of the seminar was "Ethiopia: The Other Story" and was about popular images of Ethiopia. The seminar was developed in response to concerns in the Ethiopian community about stereotyping of Ethiopia and Ethiopians. The keynote speaker was the Honourable David McDonald, Canadian Emergency Co-ordinator for the African famine.

The race relations consultants in Ottawa and Kingston made a joint presentation to the senior staff and the education officers of the Ministry of Education's Eastern Ontario regional office on race relations and employment equity to assist them in their work with individual school boards.

Consultations were held with representatives from three Kingston area school boards and St. Lawrence College on race relations and employment equity initiatives that can be undertaken. In addition, liaison has been established with the Eastern Ontario Employment Equity network, a network for school board employment equity co-ordinators.

A series of consultations was also held in Cornwall with both institutional and community representatives. One set of consultations was with St. Lawrence College, the Stormont, Dundas and Glengarry County Board of Education and the Akwesasne Board of Education (on the Akwesasne Reserve) to examine issues facing Native students in the education system. Additional consultations have been held with the Akwesasne Board Council and the local Ontario Provincial Police detachment to discuss policing on the reserve.

The Division has established liaison with a number of community groups and agencies in the Kingston area. There is an emerging interest within the area in community development and forging links between community groups in order to address race relations issues.

Southwest

The City of Windsor has struck a municipal race relations committee to be chaired by the Mayor of Windsor and to include representatives from racial minorities and key area institutions. The Division played an important role in the development of the committee, first suggesting the need for such a committee to the former Mayor, and, later as a member of the City of Windsor's Task Force on a Municipal Race Relations Committee, which developed the terms of reference for the committee and the criteria for membership.

In the spring of 1986 the Division co-sponsored a major one-day conference on race relations for educators from the four boards of education in the Windsor area as well as the University of Windsor and St. Clair College. About two hundred people attended, including community leaders, university professors, school principals, administrators, trustees and students. Both the Minister of Labour and the Race Relations Commissioner addressed the conference. In addition, the Race Relations Commissioner held a series of consultations prior to the conference. These included meetings with the Mayor of Windsor and a number of community organizations.

The Can-Am Indian Friendship Centre of Windsor, in co-sponsorship with the Race Relations Division, held a one-and-a-half-day conference entitled "Perspectives on Race Relations." There were 100 people in attendance from Windsor, Essex County and the Walpole Island Reserve. The speakers and workshop facilitators were well known figures in the Native community, whose presentations included speeches on the history of racism from a Native perspective, self-government and the constitutional talks and Native women's issues.

The Division co-sponsored a conference with the Multicultural Council of Windsor and Essex County entitled "Human Rights, Race Relations and Citizenship, Unexplored Horizons." Over 100 people attended. The Division gave a workshop on racism in the workplace in conjunction with the Windsor District Labour Council.

The Division also organized a one-day youth conference with the Windsor Black Coalition. Approximately 150 Grade 11 youths from a number of Windsor high schools participated. Speeches, workshops and plenaries focused on two principal themes: barriers to participation in the work force and resources to overcoming such barriers.

The Division provided a series of race relations training sessions to the Leamington Police Force. Similar training is being planned for other area police forces.

In early 1987 staff organized a series of meetings in London that were conducted by the Race Relations Commissioner. Events during the two-day visit included consultations with the Native community, educators and health professionals. A lunch for human resource personnel from major London area employers was held, and an evening reception attracted 120 community and institutional representatives. The trip received extensive media coverage.

The Health sector is a major employer and service provider in the London area. In addition to consultations with key health institutions and unions, and several presentations to the Thames Valley District Health Council, the Division has been active in facilitating the development of a multicultural, multiracial health coalition.

The Division has been working with the Lambton County Board of Education, the London Board of Education and the University of Western Ontario with regard to the development of race relations policies. In addition, liaison has been established with Ministry of Education personnel active in this area.

The Division has been involved in a seven-part training program being given to youth employment counsellors from a variety of programs in the London area. The focus of the training has been on providing service to a multiracial clientele. The Division provided training on race relations and help in planning a one-day follow-up to this extended training program for both counsellors and minority youth.

Southeast

A one-day conference on race relations organized under the auspices of the Hamilton Mayor's Committee on Race Relations was co-sponsored by the Division. The approximately 300 people who attended included high school students and community, union and business representatives from the Hamilton area. The Race Relations Commissioner delivered the concluding speech. Other speeches were given by the Honourable Lily Munro and the Mayor of Hamilton. The 12 workshops were on a wide range of topics to appeal to the variety of participants. Two workshops, one on Race Relations in the Workplace, the other on Neighbourhood Race Relations were presented by Division staff.

The Waterloo County Board of Education suspended the teaching of the Merchant of Venice in its Grades 9 and 10 classes following community complaints that one of the outcomes of teaching the play was the harassment of Jewish students. The Division has been endeavouring to resolve this matter by working with the Waterloo County Board and the Ministry of Education on such matters as an adoption of a race relations policy by the board of education, and offering appropriate resource material and race relations training programs for teachers. The Division has also been involved in addressing several incidents related to the teaching of Huckleberry Finn and its impact on black students.

In order to reduce racial tensions in a housing complex in Brantford, the Division has been working in conjunction with the Brantford Police and the Brantford Race Relations Committee. Efforts have included the fostering of a neighbourhood committee, a summer youth activity program and monthly community forums at which issues including race relations and human rights have been discussed.

The Division also mediated a dispute between the Ontario Lacrosse Association and two Six Nations Reserve lacrosse teams over safety at lacrosse games.

The Division assisted the City of Hamilton with an employment equity audit of its work force. In addition, the Division has consulted with the Cities of Kitchener and Brantford regarding the results of their workplace audits and strategies to address visible minority participation in the work force.

The Division delivered two race relations training sessions to 35 managers of a large area public transportation company. The focus of the sessions was on developing skills to deal with race relations issues and incidents in the workplace, as well as providing appropriate service to a multiracial community.

Over 100 people attended a Religious Founders Day conference in Brantford to learn more about seven different faiths. Division staff provided the keynote address and chaired the proceedings.

North

The Race Relations Commissioner visited Northwest Ontario to hear local race relations issues, to outline the work of the Division and to encourage race relations initiatives. In Fort Frances, the Commissioner addressed a conference on Native Access to Justice and spoke to municipal officials; in Kenora, the Division hosted a lunch for the Mayor and other institutional representatives and met with Native college students; in Sioux Lookout, the Commissioner was interviewed by the Wawatay Communication Group on television and radio, and in Thunder Bay the Division hosted a lunch for 60 community and institutional representatives and met with the Thunder Bay Friendship Centre staff. The trip received extensive media coverage and has led to a number of specific Division projects.

The Division co-sponsored a two-day conference with the Ministry of the Attorney General on "Native Access to Justice." The conference was held at the Couchiching Reserve and was attended by representatives from reserves and friendship centres in the Kenora and Fort Frances areas. The workshop on Human Rights and Race Relations generated much interest and many recommendations to the Division for outreach to Native communities.

In part as a result of the Race Relations Commissioner's visit to Northwest Ontario, the Thunder Bay Indian Friendship Centre initiated a telephone hotline for Natives who feel they have been racially discriminated against or harassed in the city. The Division helped train hotline staff. This hotline is seen as a prelude to forming a task force in Thunder Bay to address outstanding race relations issues facing Native people. The Division is also assisting the City of Thunder Bay in its consideration of a race relations policy and in its interest in developing a race relations training program for its managers.

The Division, in co-operation with Lake of the Woods District Hospital, organized a health careers day for Native high school students in Kenora. This day involved presentations by a number of health professionals from the hospital to Native students to encourage them to consider health careers.

The Race Relations Commissioner visited Sudbury to be the keynote speaker at a conference organized by the Sudbury Race Relations Committee. The conference, attended by approximately 70 community and institutional representatives, focused on race relations in the workplace and in education. Division staff assisted in leading a workshop on race relations in employment. In addition to attending the conference, the Commissioner held a press conference, spoke at a luncheon meeting for community and institutional representatives co-hosted by the Division and the Sudbury Multicultural Centre and visited the N'Swakamok Native Friendship Centre, where representatives from a number of local Native organizations were in attendance to hear a speech by the Race Relations Commissioner.

A number of incidents involving Native youth, the education system and the police have occurred in Timmins. The Division has been active in working with the Timmins Friendship Centre and other Native organizations, school officials and the police to address these incidents and to develop preventive measures.

The Division provided a one-day training session in Sudbury for Native court workers of Friendship Centres from across the province. Training included identifying race relations issues in the criminal justice system and developing strategies to address such issues. This training program was designed in co-operation with the Ontario Federation of Indian Friendship Centres as a pilot project. It is hoped that this type of training can be used by other friendship centres' staff.

A number of Libyan and Lebanese foreign students attending Northern College in Kirkland Lake encountered problems following a racial incident. Racial tensions escalated further following an arson and some misleading media coverage, which incorrectly attributed the arson to the students. Division staff visited Kirkland Lake and met with foreign student representatives, the foreign student adviser, the Deputy Chief of Police and the Mayor. As a result of this incident, contact was established with the Canadian Bureau of International Education, and the Division has agreed to provide resource materials for their international student advisers.

The Division has also provided a number of race relations training sessions to education and social services providers in Sudbury, North Bay and Sault Ste. Marie.

Metro Toronto Region

Education

The area of education is a key subject area for the Race Relations Division. In the past four years it has worked closely with the Board of Education for the City of Hamilton in developing curriculum materials on human rights and race relations for Grades 9 to 12 Man in Society and English courses. The materials were tested in classrooms by eight school boards in 1986. The Ministry of Education has indicated a willingness to adopt the materials for use throughout the province.

The Ministry of Education received assistance from the Division in developing a model race relations policy, which will be made available to all school boards in the province. The Division is also participating in a Ministry of Education committee that is examining the issue of the placement and assessment of minority students in the school system.

The Division has also actively assisted four school boards in the development of their own race relations policies. At the same time, Division staff assisted those that have already developed such policies in their actual implementation.

Numerous training sessions, seminars, workshops and speaking engagements on race relations issues were undertaken in the education sector.

Law Enforcement/Criminal Justice

The Division assisted the Council in Race Relations and Policing in the development of guidelines for police training in intercultural communications and race relations. It initiated meetings with ethnocultural service agency networks to discuss their own roles and responsibilities in improving police/minority relations. With the Black Inmates and Friends Assembly, the Ministry of Citizenship and Culture and York University, the Division jointly organized a conference entitled "Understand My Plight". The conference addressed race relations problems blacks encounter in the criminal justice system, with particular emphasis on correctional institutions. The conference also aimed to promote and encourage open discussion of racial problems in the criminal justice system.

Business and Industry

The Division responded to complaints by the Canadian-Arab Federation regarding "The Nomad Doll," which was produced and distributed by Coleco.

The doll represented a stereotypical image of Arabs, and the packaging described Arab "nomads" as terrorists and "people without honour." In co-ordination with the office of the Minister of Labour, and continuous liaison with community representatives, the Division was instrumental in having the doll removed from department stores. In addition, the company agreed to cease production of the item.

In the fall of 1986 the Division assisted the Afro-Canadian Congress in holding a conference on employment equity. The conference presented an overview of employment equity issues, including its relevance to minority communities; how it has been implemented in both federal and municipal governments and the private sector, and its impact on the work force and in the workplace.

The Division also participated in conducting an analysis to identify the training needs and skills required by teachers in the English as a Second Language program in the Ministry of Citizenship and Culture. The Division served as the primary resource for the race relations aspects of the programs, focusing on the workplace, where problems of intercultural communication and racial conflict often figure prominently. The project also involved development of a manual and a directory of resources that are available to English instructors in the workplace. Recommendations were made on future training needs.

The Division was also involved in a pilot project with George Brown College in Metro. This project included the design and delivery of 10 train-the-trainer sessions as well as the design and delivery of management training programs. The Division assisted in the development of a comprehensive training manual, the first of its kind, for use throughout the hospitality industry.

Unions

The Division maintained an active liaison with numerous union locals as well as with their central organizations. One major union was assisted by the Division in developing employment equity measures and another was assisted in updating the anti-discrimination clause in its collective agreement.

The Commissioner spoke at a number of dinner meetings organized by the Ontario Federation of Labour across the province and was keynote speaker at a conference held by the Canadian Auto Workers. Issues addressed included the need to include, or update, anti-discrimination clauses in collective agreements and the need for increased participation by racial minorities in union leadership. The Commissioner also met with and addressed representatives of the International Ladies Garment Workers Union and the United Steelworkers Union.

The Division has also provided ongoing advice and assistance to the Ontario Federation of Labour Human Rights and Race Relations Committee.

Municipal Government

Staff continued to assist various municipal governments to develop initiatives on race relations issues. In the municipalities that have Race Relations Committees, the Division acted as consultant, and in those without such committees, the Division was instrumental in acting as a resource for such a development.

In Pickering, for example, the Division assisted the Mayor to set objectives for a Mayor's Task Force on Race Relations.

Media

When the Chinese-Canadian community expressed concerns about inappropriate media coverage by a major Metro-based newspaper, the Division acted as mediator. As an outcome of the mediation, the newspaper agreed to sensitize its staff to the need to provide a more balanced portrayal of racial minorities. The Division agreed to assist in such a training program, to be organized by the Urban Alliance on Race Relations.

Housing

In an effort to maintain a positive race relations climate, the Division continued its involvement in the various housing complexes across Metro. For example, two female members of a South Asian family expressed concern that they were being subjected to racial harassment by a group of white youths while on their way to a mosque for evening prayers. The harassment took the form of racial name-calling, constant knocking at their door and repeated taunts on their way to the elevator. Division staff met with the community relations workers of Metro Housing to deal with the issue. With the involvement of Metro police and the public housing security staff the problem was resolved. The Division continued to monitor the situation in the housing complex.

A race relations training seminar was designed and delivered to a company which provides services to the Metro Toronto Housing Authority (MTHA). The training dealt with problems actually encountered by the participants on the job. The seminar, which was attended by 22 officers and three members of personnel management, contributed to assisting the participants to deal with racially sensitive incidents that they experience in their day-to-day work.

The Division also held a series of meetings with residents and youth to review community concerns about incidents involving police and visible minority families in a MTHA project. A meeting was called by the Commissioner for Race Relations, which included local tenants, institutional representatives, senior officials of the municipality and the police. Strategies to deal with the volatile situation were discussed and later pursued with the active participation of the Division.

Since the appointment of the Director of Race Relations for MTHA, in the fall of 1986, the Division has been assisting the new director to develop a comprehensive race relations program.

Religious Institutions

The Division acted as mediator in a protest by some community members in Vaughan Township against the building of a mosque and community centre in the area. The Division met with the ratepayers association, members of the Islamic community, local municipal government representatives and leaders of other religious organizations to reduce tensions and eliminate misunderstandings fostered by hate propaganda and to encourage the development of preventive measures for the future.

The Division was also actively involved in the planning of a four-day conference of Anglican Church officials, at which was discussed increased involvement of racial minorities in mainstream churches.

Health and Social Services

The Division conducted numerous workshops and training sessions in organizations dealing with health and social services in Ontario. For example, the Division co-sponsored with The Race Relations Committee of Scarborough Human Services a seminar on the need for new strategies for service to a multiracial community. The Commissioner also participated in a training session for a social service agency whose clients are predominantly young people. His remarks centred on the special needs of racial minority and immigrant families.

The Division also assisted an organization that provides mental health services for the South Asian community with respect to its needs for additional resources in serving its clientele.

Community Relations

The Division has long been involved in mediations in Metro Toronto to alleviate racial conflict in the community. To assist in responding to racial problems, the Division established a committee of representatives of the federal, provincial and municipal governments to develop a co-ordinated approach to deal with some of the underlying causes of racial tensions in Metro Toronto. The committee has continued to meet, since its formation, to develop remedial strategies.

DISCRIMINATION BECAUSE OF HANDICAP

Fiscal Year 1986/87 completes the fourth year of the implementation of the provisions of the Code relating to handicap. Amendments to the Code in 1986 brought significant changes to these provisions and will provide that constructive discrimination applies to discrimination on the basis of handicap and that there is a duty to accommodate such persons. Once the amendments are proclaimed as law, it will be illegal to deny a person with a handicap services, goods, facilities or accommodation because of lack of access to premises or lack of appropriate amenities. It will be necessary to provide such access or amenities unless to do so would cause undue hardship considering the cost, any outside funding and any health and safety requirements. Additionally, consideration will be given to any standards prescribed by regulation for assessing what constitutes undue hardship.

Handicap is defined in the Code as any degree of physical disability, mental retardation or impairment, learning disability or mental disorder. However, the Code has been amended to include discrimination against a person because he or she has received Workers' Compensation benefits. The inclusion of "an injury or disability for which benefits were claimed or received under the Workers' Compensation Act" in the definition of handicap allows injured workers who can perform the essential duties of the job to compete equally with persons who have not received such benefits. In addition, the employer has a duty to make reasonable efforts to accommodate persons who have been injured on the job.

Although a significant number of the complaints based on physical or mental handicap is handled in the regions, the Unit for the Handicapped continues to perform a specialist and consultative role. This means that the more complex complaints and issues relating to discrimination because of handicap are handled by the Unit. The Unit is also responsible for developing policy proposals in the area of discrimination on the basis of handicap. A committee, chaired by Commissioner Catherine Frazee, has been established to recommend programs and policies in this area.

A number of policies were developed by the Commission during the fiscal year, including the application of the Code to alcoholism and obesity. These policies are discussed later in this report.

The Commission's policy on insurance contracts was clarified and strengthened during the past year, emphasizing the strict requirement of objective and bona fide evidence to support the denial of insurance to any person with a handicap as defined by the Code, as well as the assessment of any individual's eligibility for insurance.

Statistics on the total number of complaints received indicate that the volume of complaints alleging discrimination because of handicap continues to exceed the number of complaints on any other single ground. Complaints on the basis of handicap represented 37 per cent of all complaints filed during 1986/87.

ACTIVITIES 1986/87

Complaints of Discrimination

During the period of April 1, 1986 to March 31, 1987 the Commission received 626 formal complaints. Over this period, 509 were closed with 352 settled, 74 dismissed by the Commission due either to lack of jurisdiction or lack of evidence to support the complaint, nine were refused under section 33 and 74 were withdrawn by the complainants.

Of complaints filed, 85 per cent were on the ground of physical handicap, eight per cent were on the ground of mental handicap and seven per cent related to claims under the Workers' Compensation Act. The types of handicaps are shown in Table 7.

The Commission continued to examine such issues as visual acuity, colour vision deficiency, diabetes and epilepsy in relation to the physical standards for fire fighters and police officers.

For example, a job applicant who failed the Police Department's colour vision test filed a complaint alleging that it was not necessary to have perfect colour vision to be a police officer. The respondent took the position that good colour vision was a prerequisite in describing vehicles and clothes worn by suspects. However, the complainant could correctly identify the colours of all vehicles, clothing and objects.

The Canadian Ophthalmological Society representing the medical experts recommended that minor colour deficiencies would be acceptable and a less rigorous test such as the Farnsworth D-15 Test would be suitable for police constables as opposed to the standard Ishihara test. The Ishihara test determines whether the individual sees colours perfectly, while the less-rigid Farnsworth D-15 test assesses whether the individual sees colours within acceptable limits for the performance of the specific job functions.

As a result of these discussions, the respondent agreed to give the Farnsworth D-15 test to those applicants without perfect colour vision. This practice is now in place.

In their consultative role, members of the staff assisted employers in their understanding of and compliance with the Commission's policy on employment-related medicals and the requirement to assess, objectively, an employee's ability to perform the essential duties of the job.

Several cases resulted in precedent-setting board of inquiry decisions during the past fiscal year. A number of decisions are highlighted below.

In Hickling, Horbay, Legris and the Lanark Leeds and Grenville County Roman Catholic Separate School Board, the parents of three children classified as "trainable mentally retarded" alleged that their children were denied a Catholic education because of handicap. The children had to attend public schools for part of each day in order to receive the special education they required. The respondent school board claimed that these educational needs could not be met within the separate school system and that the children spent enough time in a separate school to receive a Catholic education.

The board of inquiry found that the students were denied a full Catholic education because of mental handicap, and that the separate school board had not made reasonable efforts to accommodate the three children. The respondent is appealing this decision.

Another board of inquiry, Shears and Corbrook Sheltered Workshop, had been appointed to hear the complaint of a man with epilepsy who had suffered several seizures during 1983 and 1984 at the sheltered workshop he had attended for 13 years. The sheltered workshop suspended Mr. Shears and made his attendance conditional upon his wearing a safety helmet for reasons of safety after he had experienced the seizures. The board of inquiry heard medical evidence indicating that the complainant had a phobia about wearing a head covering and that, in any event, his safety would not be enhanced by wearing a helmet. Moreover, his medication had been changed and he had been free of seizures for some time. The parties reached a settlement of the complaint during the hearing, and the complainant received $3,000 in special damages and was allowed to return to work without a helmet. The respondent made adaptations to the complainant's work station, which minimized the potential of risk in the event of a seizure.

Mr. Kellerman, a man with cerebral palsy, had alleged that he was refused the glass of wine he had ordered with his lunch in Al's Restaurant and was roughly escorted out of the establishment before he had finished his meal. The respondent claimed that Mr. Kellerman appeared to be intoxicated, and had made a mess while eating. The board of inquiry found that the complainant had been discriminated against in being denied the alcoholic beverage and escorted out before he wished to leave. Mr. Kellerman was awarded $500 in general damages.

Another complaint involved a man who had worked for a branch of the Royal Canadian Legion for approximately 13 years. He alleged that, in 1983, while in hospital with cancer of the larynx, he was advised by the respondent that he could resume working when he was fit to return. When he attempted to do so, he was laid off indefinitely due to a shortage of work. However, the complainant maintained that he had been replaced by another employee. He claimed that there was no shortage of work and alleged that the employer did not wish to place him back into his position following his illness because it was felt that he could no longer effectively perform his duties.

The respondent indicated that the Legion was prepared to reinstate the complainant. However, he had already accepted another job.

A board of inquiry was appointed to hear the complaint. However, the matter was settled prior to the hearing. The board endorsed the settlement, which included a payment of $2,200 in damages to the complainant as well as a letter of assurance from the respondent to the Commission indicating that their employment practices conform to the requirements of the Code.

Other cases referred to boards of inquiry during the fiscal year involve the following issues:

- The use of employment medicals to screen job applicants prior to an offer of employment;
- Whether employees with such disabilities as a shoulder injury, visual impairment, cerebral palsy, diabetes, epilepsy, knee injury, hearing impairment or back injury were capable of performing the essential duties of such jobs as coal handler, assembler, grocery clerk, driver, file clerk and machine operator;

- A determination of damages to be awarded to job applicants or employees who had not been objectively assessed to determine their ability to perform the essential duties of the job.
- Whether a handicapped employee had the right to assume a risk of injury when the risk is only to himself or herself;
- Whether a condominium corporation had a right to deny the occupancy of accommodation to former psychiatric patients in a group home setting; and
- Whether a board of education should provide an elevator in a two-storey school building for a student who was in a wheelchair.

Public Education

The staff continued to play a role in educating the public about the rights of disabled persons under the Code. In fulfilling this function, staff members participated in workshops, seminars and panel discussions with various organizations and associations, including the Personnel Association of Toronto; Unionville High School; the staff at Lyndhurst Hospital, St. Joesph's Hospital, the Workers' Compensation Board and the Delta Chelsea Inn, the Ontario Library Association and the Occupational Health Nurses' Association.

In addition to the educational function, the staff provided consultation on the interpretation and application of the provisions of the Code. This consultative service has been provided to business, industry, unions, vocational associations, health care professional associations, consumer groups and agencies throughout the province. Those who consulted the Unit included the Muscular Dystrophy Association, Ontario Hydro, York Elevator, Canadian General Electric, Mohawk College, the City of Hamilton, the City of Etobicoke, the Canadian Hemophilia Society (Ontario Chapter), Annis Steel Service, Creditel Company, the Ontario Medical Association, People United for Self Help (Ontario) and the City of Ottawa.

Inter- and intra-governmental discussions were held with human rights commissions and other ministries, agencies and departments. The Ontario Ministry of Community and Social Services, the Saskatchewan Human Rights Commission, the New Brunswick Human Rights Commission, the Alberta Human Rights Commission, the Canadian Human Rights Commission, the Ontario Ministry of Health and the Ontario Secretariat for the Disabled are among the government agencies that have been provided with consultative services.

Staff Training and Development

Ongoing consultations and training sessions are conducted for the Commission's staff on new policies, current issues and approaches for dealing with discrimination because of handicap. The Commission develops and acquires resource information about discrimination against disabled persons. These materials deal with such subjects as legislative initiatives, related legal interpretations and case law. This information allows staff to keep abreast of new developments in North America and other countries.

Program and Policy Development and Research

Having established a policy regarding employment-related medical examinations in 1985/86, the Commission reviewed many employment medicals that were voluntarily submitted by employers during 1986/87. As well, the Commission has negotiated compliance with this policy among employers against whom complaints were filed on the issue.

The Commission has developed policies on alcoholism and obesity as handicaps and on requests for a driver's licence number or a valid driver's licence on employment application forms.

Guidelines on discrimination on the basis of handicap in insurance are now being developed. Research is also being conducted with respect to an employment policy to test job applicants for the use of certain drugs.

A research report has been prepared on the issue of risks to which handicapped employees are exposed in the workplace. The study includes definitions of terms, an analysis of societal attitudes towards workers with handicaps, the concept of "dignity of risk" and methods for assessing and minimizing risks in the work setting. Also addressed are the legal issues relating to risk and disabled workers as well as a review of legislative protections for employees with handicaps in other jurisdictions.

Further information on these policies can be obtained from the Unit for the Handicapped.

EXAMPLES OF

COMPLAINTS OF DISCRIMINATION

1986/87

EMPLOYMENT

Handicap

The complainant, a woman with epilepsy, had been placed in a housekeeping position in a nursing home on a community college training program. She had been evaluated as performing her job duties competently. Several months later, she applied for a permanent position in the same department and was required to undergo a medical examination as part of the screening procedure. She was informed that she could not be placed in the job because of her epilepsy. She filed a complaint, alleging that she had been discriminated against in employment because of handicap. Her complaint also alleged constructive discrimination contrary to section 10 of the Code because of the employer's requirement that job applicants must undergo pre-employment medical examinations.

During the investigation, the Commission was informed, by the complainant's co-workers and supervisor, that the complainant had been an excellent worker who had performed almost all duties on her job description satisfactorily. The only duty she had not performed was scrubbing the floors with a floor polisher. However, this heavy appliance is only used once a year, and it turns off automatically when the operator lets it go. The other workers therefore stated that the polisher would not be a hazard in the event that a person operating it suffered a seizure.

The Commission sought the opinion of two medical experts who examined the complainant. They stated that her epileptic condition does not prevent her from doing any of the duties described in the job description, and that the performance of these duties would not place her or her co-workers at risk. The evidence supported the allegations.

As a means of settling the complaint, the parties agreed to the following proposals:

- the respondent would offer the complainant the next available position in the housekeeping department;
- the respondent would pay the complainant the sum of $3,000 representing compensation for lost earnings and mental anguish;
- the respondent's policy regarding employment-related medical examinations would be amended to bring it into compliance with the Code.

* * * *

A man who had received treatment for depression alleged that his employer of 15 years terminated his employment because of his mental disorder. He had been absent from work on several occasions in 1982 and later in 1985. Upon his return from sick leave in 1985, he was informed of his dismissal, despite the written assurances of his doctor that he was fit to return to work.

A Fact Finding Conference was held among the parties to determine their positions with respect to the allegations and to attempt to effect a resolution of the complaint.

The respondent claimed that the complainant had problems with his work performance. Therefore, the abilities and job performance of the complainant were compared with those of the individuals who had been hired in his position since he left the company. It was learned that the complainant's performance had been equal to or better than that of his co-workers except for the periods he had been under treatment, and his productivity had been consistently high. The weight of the evidence tended to support the allegations.

In settlement, the parties agreed to the following terms:

- the complainant was re-hired and offered a new position with the company to commence immediately, and was placed on three months' probation in accordance with company policy;
- the complainant's performance would be reviewed at the end of three months, and an assessment made of his progress;
- the employer would notify the Commission of any decision to dismiss or transfer the complainant because of unsatisfactory performance.

* * * *

The complainant had cerebral palsy and walked with the aid of crutches. He had just begun a three-month contract as a clerk with an Ontario Government agency when he was informed that his contract was being terminated at the end of the week. He telephoned the Commission, alleging discrimination in employment because of handicap.

Because the job was still available, the Commission dealt with the complaint by the priority case handling method. The Commission contacted the employment agency that had referred the complainant and was informed that the respondent had dismissed him because his job duties required him to negotiate a flight of stairs occasionally to retrieve documents.

The Commission then telephoned the employer, explained the Commission's mandate and informed him of the complaint. They discussed the job requirements and the employer's duty to make reasonable efforts to accommodate the complainant's handicap.

The employer acknowledged that arrangements could easily be made to enable the complainant to return to the job, and his three-month contract was restored. The Commission offered assistance to the employer in accommodating workers with handicaps.

This settlement was confirmed in writing.

* * * *

The complainant had been required to undergo a medical examination shortly after commencing his employment as an assembly line worker. A month later, he was advised that he was laid off for "medical reasons." Because these reasons related to the medical history of his parents, and had nothing to do with his own medical condition, he filed a complaint alleging discrimination in employment because of handicap.

During the investigation, the Commission sought the opinion of an independent physician on the complainant's ability to perform the essential duties of the position. The evidence indicated that he was able to do so, and, indeed, had already performed in the job for over a month.

Because a settlement could not be reached, the case was referred to a board of inquiry. However, the company subsequently made an offer of settlement, which was acceptable to the complainant and Commission:

- the respondent provided the complainant with the sum of $1,700 in compensation for lost earnings and mental anguish;
- the company modified its policy regarding employment-related medical examinations to bring it into harmony with the provisions of the Code. A directive concerning the new policy was sent to all employees.

* * * *

The complainant had been employed as a keypunch operator by the respondent company for eight years when she was injured in an automobile accident. She was absent from work for two months because of her injuries, after which time she was dismissed because of her absence, in accordance with the company policy. Her complaint alleged discrimination in employment because of handicap.

The respondent confirmed that employees were automatically discharged when absent because of illness or injury. Consideration was not given to making reasonable efforts to accommodate such employees. The evidence indicated a breach of the Code. In settlement, the company agreed to:

- cease the practice of dismissing employees who had been absent for medical reasons, except where it could be demonstrated that to retain such employees would cause undue hardship on the business;
- place the complainant in the next available position for which she was qualified; and
- compensate the complainant in the amount of $1,789 for earnings lost and mental anguish.

The complainant was later re-employed in a higher-paying position with the company.

* * * *

The complainant's employment as an assembler was terminated a month before his one-year probationary period expired. He alleged that the termination, as well as harassment that he had experienced from his supervisor, was based on handicap. He has a speech impediment.

The investigation disclosed that the employer had been aware of the complainant's speech impediment at the time he was hired. Company representatives provided documentary evidence that the complainant's work performance had been unsatisfactory and had not improved sufficiently after 11 months of employment to warrant giving him permanent status.

Several co-workers supported management's evaluation of the complainant's performance, noting that he frequently failed to meet production standards. A number of other assemblers had been dismissed under similar circumstances and no workers with similar employment histories had been retained in the previous one-year period, according to company records. The evidence did not support the allegations of the complaint.

The findings of the investigation were reviewed by the Commission. It was decided to dismiss the complaint, and the parties were provided with the following reasons in writing:

- The evidence indicated that the complainant was dismissed because of the inferior quantity and quality of his work as a bench and structural assembler, as well as his argumentativeness with management;
- the process of evaluating the complainant and terminating his employment was consistent with personnel practices in similar situations, and there was no evidence that the complainant's speech impediment was a factor that was considered in the decision to terminate his employment;
- moreover, when this complaint was filed, the complainant was unable to provide any particulars to support his belief that his handicap was a factor in his dismissal;
- The evidence, therefore, did not indicate discrimination or harassment on the ground of handicap.

* * * *

Race, Colour, Ethnic Origin

The complainant, a black man of Barbadian origin, had been employed by the respondent as an accountant for nine years. He had observed that white staff members received promotions despite the fact that their qualifications were equal or inferior to his own, while his applications for promotions had been unsuccessful. In 1983, when a senior manager advised him to transfer to a lower-paid job in another department, he informed the manager that he intended to file a complaint with the Commission. The next time a promotional opportunity arose, the complainant applied and was again refused. The position was filled without a competition being held. He filed a complaint alleging discrimination in employment because of race, colour and ethnic origin, and reprisal action for indicating his intention to enforce his rights under the Code.

At the Fact Finding Conference, it was disclosed that the complainant had repeatedly been bypassed for management positions despite his excellent qualifications and experience. His supervisors declared him to be a highly competent employee. However, the evidence indicated that two of the complainant's managers had made it known that they would not hire or promote black individuals. These managers attempted to make the complainant's job redundant and to force him to resign. Many of the jobs for which he applied were given to white workers without interviews being conducted. This was verified from letters sent to the successful applicants, several of whom had not been interviewed. The evidence supported the complaint.

In settlement, the employer agreed to transfer the complainant to another department, where he received a promotion, and to pay him the amount of $1,000 in compensation for mental anguish. A human rights seminar was conducted by the Commission for all managerial staff.

* * * *

The complainant, a black male, alleged that his white co-workers had made derogatory racial comments to him since he began working as a clerk in a clothing store two months previously. He made both co-workers and the store manager aware that the racial slurs were unacceptable to him, but no corrective action was taken. He resigned his position and filed a complaint alleging racial harassment.

The employer and the co-workers, who had been named as individual respondents, did not dispute the allegations at the Fact Finding Conference. The evidence had established a violation of the Code. A settlement agreement was reached as follows:

- the corporate respondent paid the complainant the amount of $3,000 in compensation for lost earnings and mental anguish. He did not request reinstatement because he had found a new job;
- the respondent agreed that the Commission would conduct a human rights seminar for its employees, and posted Code cards on the premises.

* * * *

The complainant, a black male, alleged that he had been discriminated against in the provision of services and facilities because of race and colour when security guards in a shopping mall issued him a notice banning him from the premises. He alleged that his conduct had been beyond reproach while in the mall.

Representatives of the shopping mall and security company informed the Commission during the investigation that the banning notice had been issued in error, and had been based on incorrect information. In an effort to address the public interest aspect of the complaint, the Commission reviewed a random sample of banning notices, notices of caution and charges of trespassing that had been issued by the security staff over the previous six months. The analysis revealed that a disproportionately high number of non-whites had been issued such a notice.

The evidence supported the allegations, and in settlement of the complaint, the respondent agreed to the following:

- the ban against the complainant was rescinded, and he received a letter of apology;
- the security staff participated in a two-day human rights seminar conducted by the Commission, which addressed the effects of stereotyping on race relations;
- a human rights policy was developed for members of the security staff and a directive to this effect was sent to all Ontario branches of the security company.

* * * *

The complainant, a man of Korean origin, had been employed as a sewing machine operator in the respondent company for two years when problems developed with his supervisor. Several incidents occurred when he was disciplined for conduct that went unnoticed when practised by his white co-workers. On one occasion, when a fight developed between him and a white employee, management refused to accept his claim that he had not initiated the dispute and suspended him for two days. The white co-worker was not disciplined. The complainant alleged discrimination in employment because of race, colour and ethnic origin. He also alleged harassment in the workplace because of race.

During the investigation, the Commission interviewed the complainant's co-workers and supervisors. Other employees confirmed that the supervisor had applied different standards of discipline according to race and colour, and two witnesses had overheard the supervisor using derogatory racial terms while talking to the complainant. A former black employee stated that he had resigned because of the supervisor's racially motivated conduct. The evidence confirmed the complainant's allegations.

In conciliation, the respondent agreed to compensate the complainant in the amount of $3,000 for mental anguish and to hold a human rights seminar, conducted by the Commission, for its management employees.

* * * *

Sex, Sexual Harassment

The complainant had been employed as a buyer with the respondent company for five years. She had been complimented on her work performance and had taken night courses in business administration in an effort to improve her qualifications.

She applied for two administrative positions, and was not successful. In each case, a man had been hired for the position. She alleged discrimination in employment on the ground of sex.

The investigation revealed a significant under-representation of women at the middle and senior management levels and indicated that the complainant's qualifications and experience were superior to those of the two men who had received promotions over her. The evidence tended to support the allegations.

In conciliation, the parties agreed to the following terms of settlement:

- the respondent agreed to promote the complainant to the next available position for which she was qualified;
- since the complainant's evening courses were directly related to her duties, the company agreed to reimburse her for her tuition fees upon successful completion of the program;
- the respondent introduced an affirmative action program to increase the employment of women at all levels of management.

* * * *

The complainant had worked for a financial institution as a senior clerk for seven years. For the year prior to filing her complaint, she had been assigned to a more responsible job when the incumbent, who was a male, took a leave of absence. When the incumbent decided to resign from the company, the complainant applied for the position and was refused. Another male was hired, and she was responsible for training him. Her complaint alleged discrimination in employment because of sex.

The Commission interviewed the complainant's supervisors during the investigation, and they reported that her work performance had been excellent while she held the more senior position. Personnel records indicated that her qualifications and experience were superior to those of the man who was placed in the job. The evidence indicated that the complainant had been refused the promotion because of her sex.

In settlement, the company agreed to offer the complainant the next available job for which she qualified and to notify the Commission about all such openings for a one-year period. Because the complainant had found another position, she did not request compensation for earnings lost due to discrimination. She did, however, receive $500 for mental anguish.

* * * *

The eight female complainants had been employed as assembly line workers with a large manufacturing firm for periods ranging from six months to two years. They alleged that their foreman had made repeated sexual advances towards them during the course of their employment. They further alleged that they had made it clear that these advances were unwelcome. When they objected to the foreman's conduct, he assigned to them the least desirable duties in the plant. Their complaints alleged sexual harassment and reprisal actions because they had refused the sexual advances.

The complainants had provided the Commission with the names of several co-workers who had witnessed the physical advances, as well as the names of several women who had worked for the company in the past. Many of these witnesses related similar incidents involving the foreman in question. The evidence supported the allegations.

The following settlement was reached among the parties to the complaints:

- a letter of warning was placed on the foreman's personnel file, indicating that he would be dismissed in the event of future complaints of sexual harassment;
- a directive was sent to all employees of the company, informing them of the policy against sexual harassment;
- the Commission conducted two seminars on human rights for management staff and hourly employees;
- the complainants were compensated in amounts ranging from $200 to $700 calculated on the basis of the nature of the harassment, its frequency, the length of the complainant's employment and the psychological impact of the harassment.

* * * *

The complainant had been working for several months as a filing clerk at the respondent company when a male supervisor began making physical sexual advances towards her. He also asked her intimate questions about her married life. She had told him that his behaviour was unwelcome, but the harassment continued. The complainant informed a senior manager about the problem and the behaviour ceased for two weeks, then began again. She resigned from the company and filed a complaint alleging sexual harassment.

At the Fact Finding Conference, the company's representative acknowledged that the complainant had brought the matter to his attention and admitted that he had received similar complaints about the supervisor from other female employees. The following settlement was agreed to among the parties:

- With the assistance of the Commission, the company developed and circulated a policy that opposes sexual harassment and promotes equal employment opportunity;
- the complainant received the sum of $2,500 in compensation for lost earnings and mental anguish.

Creed, Age

The complainant, whose Baptist religion prohibited her from working on Sunday, alleged that her employer required her to work on a Saturday and Sunday for the purposes of taking inventory. She alleged that the personnel manager had told her at the time of hire that weekend work would not be required. When she informed her supervisor that she would be unable to report for duty on the Sunday, she was dismissed.

The parties did not disagree with respect to the issues during the Fact Finding Conference, and they explored the possibility of accommodating the employee's religious practices short of undue hardship. It was concluded that arrangements could have been made to allow the complainant to exchange the Sunday duty with a co-worker since inventory was taken only once a year.

The complainant had been hired on contract, which expired two weeks after the alleged discrimination. The settlement included compensation in the amount of $600, representing lost earnings for the two-week period, and a directive from management to all employees setting out the obligation to accommodate the religious observances of staff unless to do so would cause undue hardship. Code cards were displayed on company premises.

* * * *

The complainant was a member of a religion that prohibited women from wearing slacks while working. She had been hired as a packer, and the employer maintained that wearing pants was mandatory for safety reasons. When the complainant was told that she would be dismissed if she did not dress according to company policy, she demonstrated her ability to operate the equipment safely and efficiently while wearing a skirt. The respondent would not withdraw his objections. The woman filed a complaint alleging discrimination in employment because of creed.

An independent safety expert observed the complainant performing the job duties while wearing a skirt and stated that her clothing did not restrict her movements and posed no risk to herself or other workers. The evidence tended to confirm the allegations.

The parties agreed on the following settlement:

- the complainant would be rehired provided that she wore a skirt and footwear that allowed ease of movement;
- the respondent would compensate the complainant in the amount of $3,000 representing lost earnings and mental anguish;
- the company issued a memorandum to all staff setting out its policy of non-discrimination.

* * * *

The complainant's employment had been terminated because he had refused to report for work on Saturday. As a Seventh Day Adventist, he was forbidden by his religion to work on the sabbath, which lasts from sundown on Friday to sundown on Saturday. He alleged discrimination in employment because of creed.

The investigation disclosed evidence in support of the allegations, and also revealed that the complainant's religious beliefs could have been accommodated by exchanging shifts with other workers. In settlement, the company agreed to reinstate the complainant with no loss of seniority, to accommodate his religious practices and to compensate him in the amount of $1,923 representing lost earnings and mental anguish.

* * * *

A 52-year old woman applied by telephone for a job as a waitress in response to a newspaper advertisement. She alleged that she was invited for an interview, but when she arrived at the restaurant, the owner asked her age and indicated that he had "a very young staff." The woman telephoned the Commission to complain of discrimination in employment because of age. Because the job was still available, she agreed that her case should be dealt with by the priority case handling method.

The Commission contacted the owner of the restaurant and explained the provisions of the Code. The owner apologized for asking the question about age and stated he was merely concerned that a new employee be able to "fit in." He agreed to interview the complainant on an equal basis with other job applicants. The complainant was interviewed and received an apology from the respondent. She informed the Commission that she was satisfied with the outcome of the complaint. She later accepted another position for which she had applied, because it offered better wages. Both parties received a letter from the Commission confirming the settlement.

* * * *

ACCOMMODATION, GOODS, SERVICES AND FACILITIES

Race, Colour, Ethnic Origin, Handicap, Family Status, Receipt of Public Assistance

A black woman had telephoned in response to a newspaper advertisement for a cottage, and requested the opportunity to view it. Arrangements were made for her to visit the cottage the next day. When the owner answered the door, she told the complainant that the cottage had been sold that morning and she had been unable to contact the woman to cancel the appointment. Several days later, the complainant noticed that the advertisement was still in the paper and she asked a male friend to telephone the vendor. He was told that the cottage was still available. Her complaint alleged discrimination with respect to accommodation because of race and colour.

At the Fact Finding Conference the owner admitted that they had refused the complainant because she was black and said the neighbours would object if a black family were to move in. The parties agreed to settle the complaint on the basis of

$2,000 in compensation for insult to the complainant's dignity. Because she had obtained suitable housing elsewhere, she did not request compensation for out-of-pocket expenses.

* * * *

An East Indian woman had telephoned to inquire about an apartment that had been advertised in the newspaper. She was told by the superintendent that it had already been rented. She became suspicious and asked a friend without a foreign accent to telephone the number advertised. The friend was given an appointment to view the apartment. The complainant alleged discrimination in accommodation because of race, colour, ethnic origin and place of origin.

The apartment was still available, and the matter was dealt with by the priority case handling method. The Commission contacted the building manager and related the complainant's allegations. The manager stated that he had a non-discriminatory rental policy and offered to show the complainant another apartment, located on a higher floor, that had a better view than the original accommodation. She accepted the apartment, and the settlement was confirmed in writing.

* * * *

The complainant, who received Mother's Allowance benefits, alleged that she had been denied rental of an apartment because the building manager "did not want a building that was full of welfare recipients." She had already been told on the telephone that several units were available on the date that she planned to move. She filed a complaint alleging discrimination with respect to accommodation because of receipt of public assistance.

The matter was dealt with through priority case handling. The building manager informed the Commission that there were a number of tenants who received social assistance, but the owner of the building had instructed that their numbers be kept low. When the provisions of the Code were explained to him, he agreed to accept the complainant's application and to rent her an apartment. He also agreed to post Code cards in public areas of all rental buildings owned by the corporate respondent. The settlement was confirmed in writing.

* * * *

The complainant, a woman with cerebral palsy, alleged that she was denied life insurance because of handicap. The insurance policy had been refused despite the fact that her physician had advised that her condition did not affect her life expectancy in any way.

At the Fact Finding Conference, a representative of the respondent insurance company confirmed that the insurance policy had been denied on medical grounds and in the absence of any evidence that the complainant's condition placed her at risk. In settlement, the respondent offered to provide the complainant with the $50,000 life insurance coverage she had applied for and to write her a letter of apology as well as to issue to all employees a declaration of its non-discriminatory policy. This offer was accepted, and the case was settled.

* * * *

The complainant alleged that a public housing authority had denied her the right to apply for subsidized housing accommodation because her father had died without paying several months of back rent owing on an apartment he was renting from the same housing authority. Although the complainant had lived with her father in his apartment for a period of time in the past, she was not a tenant of record. She contacted the Commission and her complaint was dealt with by priority case handling.

The Commission explained that discrimination against an individual based on the conduct of that person's father constituted discrimination on the basis of family status. This ground is defined in the Code as "the status of being in a parent and child relationship." Upon being advised of the provisions of the Code, the respondent agreed to accept the complainant's application. The settlement was confirmed in writing.

* * * *

DECISIONS OF BOARDS OF INQUIRY
AND THE COURTS
1986/87

EMPLOYMENT

Sex, Sexual Harassment

Bishop and Hardy

Ms. Bishop was employed as a trainee in Mr. Hardy's furniture refinishing workshop. She alleged that she usually worked until 10:00 p.m. and that Mr. Hardy normally drove her home. Occasionally, they would have a drink together on the business premises after work.

In her testimony at the hearing, Ms. Bishop stated that Mr. Hardy told her that he wanted a person in his shop whom he could trust, and she could be that person if she went to bed with him. When she rejected this overture, he informed her that she would have to go to bed with him if she wanted to keep her job. She again rejected this solicitation and he told her she was fired.

Ms. Bishop further testified that she told her roommate about the encounter that evening. On her roommate's advice, she then applied for public assistance and told the social services caseworker that she had lost her job because she had been sexually harassed.

The respondent denied the allegations, but in the view of the board, his evidence to counter the complainant's story was very limited. The chairman of the board of inquiry went on to state that the testimony of Ms. Bishop and her subsequent conduct, as verified by her roommate and the social services caseworker, were consistent with her complaint that Mr. Hardy had requested sexual favours as a condition of keeping her job.

Having found discrimination contrary to the Code, the board ordered the respondent to compensate the complainant in the amount of $395 representing lost wages and $1,500 in general damages for mental anguish. The Commission also asked for an order that Mr. Hardy's hiring practices and conduct with respect to female employees be monitored by the Commission in order to ensure compliance with the Code. The board ordered that, for two years, Mr. Hardy be required to inform the Commission in writing whenever a female employee leaves his employment and that he furnish her name and address, the period of employment and her employment record, including reasons for termination.

Cuff and Gypsy Restaurant, Abi-ad

The complainant, Ms. Cuff, alleged that Mr. Abi-ad, her employer and the operator of Gypsy Restaurant, had discriminated against her with respect to employment and harassed her because of her sex. She further alleged that her employer carried out a reprisal against her by terminating her employment for refusing his advances.

The complainant testified that her employer frequently made comments with sexual overtones about female passers-by and made offensive remarks directly to her about sexual activities. She further stated that he touched and rubbed her body despite the fact that she told him this conduct was unwelcome. In addition, the employer requested sexual favours of her, and said "that's how black people make their living, by doing blow jobs."

Mr. Abi-ad denied the allegations in his testimony and claimed that several of his employees, customers and applicants for employment had offered to have sexual relations with him. He made a number of derogatory references to the complainant's race and colour while giving testimony during the hearing. He stated that he had dismissed the complainant because of problems with her work performance.

However, the board found the comments relating to alleged incompetence on the part of the complainant to be inconsistent with the fact that the employer had steadily increased her hours over the period of her employment and had taken her back following a month-long illness. The board also accepted the similar fact evidence that was provided in support of the allegations by several former employees.

Having found that discrimination contrary to the Code had occurred, the board ordered the respondent to pay to the complainant the sum of $325.04, representing lost earnings and interest, and $2,000 in compensation for mental anguish caused by the discriminatory act. He was further ordered to send a letter of apology to the complainant and to amend her Record of Employment to reflect the true reasons for terminating her employment as indicated in the board's decision.

Davey and the Canadian Union of Public Employees, Local 16, Sault Ste. Marie Board of Education et al

Mrs. Davey, who was a cleaner with the respondent Board of Education at the time she filed her complaint, alleged that the school board discriminated against her in employment because of sex, in that cleaners, who were all female, were treated differently from caretakers, who were predominantly males. She alleged that, although the two positions involved similar duties, the caretakers were in a more favourable position regarding hours of work, seniority and receipt of responsibility pay. She also alleged that she and other cleaners were not given an equal opportunity to apply for the caretaker positions.

A board of inquiry had been appointed to decide the complaint, but the parties reached a mutually satisfactory settlement prior to the hearing.

The settlement between Mrs. Davey and the union provided as follows:

- the union paid $1,000 to Mrs. Davey and wrote her a letter acknowledging the problems that had existed;
- Mrs. Davey was offered the next available position as head caretaker at either Eastview Public School, Bayview Public School or Ben R. McMullan Public School;

- the union and Local 16 agreed to implement an affirmative action program, which includes assistance to female cleaners who wish to prepare for the positions of custodian, assistant head caretaker or head caretaker in an elementary school; training for the positions of custodian or caretaker and promotional opportunities for these positions.

The following settlement was reached between Mrs. Davey and the respondent board of education:

- the board paid $13,000 to Mrs. Davey and wrote her a letter of apology;
- the board agreed to employ a person in the position of Employment Equity Officer for a one-year period to deal appropriately with human rights issues as they may occur;
- Mrs. Davey received the next available position as head caretaker at one of the three aforementioned public schools;
- the board agreed to implement the affirmative action program referred to above.

The terms of settlement were implemented by consent order of the board of inquiry.

Geiger, Barboutsis and London Monenco Consultants Ltd., Roger

The board of inquiry decided the complaints that had been filed by two single male employees of the respondent. They had been assigned by the respondent company to the Ontario Hydro Generating Station at Atikokan. The terms and conditions of employment provided a differential living allowance ($850 per month for married employees; $350 per month for single employees) for employees who elect not to reside at the Atikokan camp site; and a company-paid return trip to home base every three weeks for married employees, which was not provided to single employees.

The complainants and Commission submitted that both of these provisions were a denial of equal treatment with respect to employment because they discriminate on the basis of marital status.

The company argued that the differential treatment was a reasonable and bona fide qualification because of the nature of the employment at Atikokan and, therefore, the policy fell within the exception to the provisions of the Code that is set out in section 23(b).

The board found that the differential relocation allowance, while clearly discriminatory, was not in contravention of the Code since it is considerably more expensive to relocate a family than it is for a single employee without dependents to move to a remote job site.

With respect to the provision of company-paid trips to home base for married employees, the board supported the position taken by the company and declared that the provision of flights home for married employees was honestly imposed, in good faith, and in the sincerely-held belief that it was necessary to induce the married, more senior company personnel, to move to the remote Atikokan job site. It was provided in the interest of adequate performance of London Monenco's subcontracting obligations to Ontario Hydro. The board therefore ruled that the benefit was objectively related to the employment and was reasonably necessary to the discharge by the respondent of its subcontractor's obligations in an efficient and economical way.

Accordingly, the complaints were dismissed. The Commission is appealing the decision to the Divisional Court of the Supreme Court of Ontario.

McMinn, Bourgeois, Brooks and the Sault Ste. Marie Firefighters Association Local 529, McDermott

The three female complainants were clerical workers with the Fire Department and had become members of the respondent union in 1979. They alleged that they had been denied promotions and benefits because they were improperly placed on the seniority list because of their sex. They filed their complaints against the union under sections 5, 8 and 10 of the Code in 1982 after numerous attempts to file grievances with the union over seniority lists posted in 1981 and 1982.

The parties negotiated a settlement of the complaints on the second day of the board hearing. The union agreed to revise the seniority list and to post the complainants on it properly. It was also agreed that the union would explain the settlement in detail at its next general membership meeting. For their part, the complainants agreed not to pursue any further complaints or grievances regarding the seniority lists or other issues raised in their complaints.

The chairman of the board of inquiry endorsed the settlement and ordered the union to amend the seniority lists.

Pattison and the Board of Commissioners of Police for the Town of Fort Frances, Solomon, Murray

Ms. Pattison, who was a constable for the respondent police force, alleged that she had been discriminated against in her employment because of sex. The complaint arose out of two pregnancies and alleged discrimination during two time periods: January 12 to June 30, 1985 and January 22 to July 7, 1986. The allegations were as follows:

- there was constructive discrimination within the meaning of section 10 of the Code by the requirements of the respondents that, during her pregnancy, she perform regular police duties and that she wear her issued uniform and gunbelt despite the fact that they no longer fitted her;

- there was direct discrimination within the meaning of the Code because the limited job duties that would have satisfied the employer's requirements to make reasonable efforts to accommodate Ms. Pattison had been denied her despite being provided for male police officers who were disabled;

- there was also direct discrimination within the meaning of the Code because sick leave in the context of the prevailing collective agreement between the union and the force had been granted to male constables who were temporarily disabled, and it had been denied Ms. Pattison.

In her testimony at the board of inquiry, Ms. Pattison stated that she had informed her employer that her physician said she should not be exposed to any potentially violent or physically demanding situation. She therefore requested that she be assigned to alternative duties, and pointed to situations where male officers were given restricted duties following an injury or other form of incapacitation. Ms. Pattison also stated that she was unable to wear her uniform because it was too tight, and that her doctor had advised her not to wear a gunbelt. Counsel for the Commission argued that the regulations of the Police Force allowed both for restricted duties and a variation in the kind of uniform that might be worn, if the chief so ordered. However, the complainant was advised that she would not be paid unless she was in uniform and that she would be expected to undertake the regular duties of a constable.

With respect to these aspects of the complaint, the board found that Ms. Pattison was not incapacitated from performing the job of regular patrol because of her pregnancy at the time she made the request, that is, within the first three to four months of that pregnancy. Moreover, it was the board's opinion that the only available alternative position in which the complainant could have been placed in the later stages of her pregnancy was that of clerk-typist. The board rejected the Commission's argument that Ms. Pattison could, and should, have been placed in one of several other positions on the force. The board further concluded that simple modifications could have been made to her uniform during the early stages of her prgnancy by moving several buttons.

Because the complainant refused to continue wearing the uniform and to assume normal patrol duties, she was placed on an unpaid leave of absence. As a member of the force she could not take other employment without the permission of the chief; her request for such permission was denied.

The board dismissed the allegations relating to a violation of sections 4 and 10 of the Code and held that the complainant's pregnancy in no way prohibited her from carrying out the orders relating to uniform, gunbelt and patrol duty at the time these orders were given. The board found, however, that although there was alternative work available from time to time as a clerk-typist, which was offered to male constables on a regular basis, the complainant was never given the opportunity to assume this position.

The board then addressed the allegations arising out of the complainant's second pregnancy. She had requested an extension of her leave of absence for approximately three months. The additional leave was granted, but Ms. Pattison was informed that she would be sent to an advanced training course at the Ontario Police College upon her return from the leave of absence in order to acclimate her to police work in light of the considerable period of time she had been off duty.

Shortly after the extended leave commenced, the complainant became pregnant. Upon being informed of this, the Chief of Police testified, he requested the Police

College to make special arrangements for Ms. Pattison and her baby, including housing accommodation off campus and limited physical activity during the course. The evidence indicated, however, that this arrangement was not satisfactory to Ms. Pattison, who declined to go on the training course and requested light duties. She subsequently took sick leave and later began her maternity leave. On September 7, 1986, she resigned from the force.

The board concluded that the respondents had made reasonable efforts to accommodate the complainant during her second pregnancy, and dismissed this aspect of the complaint.

In upholding the allegations relating to the respondent's failure to offer Ms. Pattison alternative work as a clerk-typist, the board ordered that the complainant be awarded special damages based on the following criteria:

- from the time of the complainant's January 1985 leave of absence she was entitled to substitute for absent clerk-typists in lieu of those constables who performed such work on an overtime basis. In this regard, she is to be paid at her then prevailing rate as a constable;

- where one absent clerk-typist shift followed another and overtime would have been required, Ms. Pattison was entitled to share in that overtime on the same basis as other constables;

- The computation of damages for Ms. Pattison is to end as of May 1985, when she became ill.

The Commission is appealing to the Divisional Court of the Supreme Court of Ontario that portion of the decision dismissing the allegations made with respect to the complainant's first pregnancy.

Ponte and Hurontario Travel, King

The complainant, a male, responded by telephone to an advertisement for a travel counsellor with the respondent company in 1981 and was informed that the job was for women only. He alleged discrimination in employment on the basis of sex.

The complainant testified that when he inquired about the position, the respondent told him that uniforms were required in the office, and since they were designed for women they would not look good on him. He was denied an interview.

At the suggestion of a Human Rights Officer, the complainant arranged for two of his friends, one male and one female, to place calls to the respondent claiming the same qualifications as the complainant. They were instructed to record the precise response.

When the man called, the respondent asked if he had typing and other related skills. He answered positively. Once again, the respondent stated the job was only available to a girl and that "the skirt would not look good on him."

Thirty minutes later, the woman called and was granted an interview. It was only when she called back two days later to cancel the interview that she was asked, at the end of the conversation, whether she had any experience in the field.

The board held that, based on the facts presented, the granting of an interview to the woman while denying one to the complainant without any relevant distinguishing factors constituted a violation of the Code.

The board ordered the respondent:

- to pay to the complainant the sum of $750;
- to attend a one-day training session to be provided by the Commission to review the employment practices and procedures as prescribed by the Code.

Whitehead and Servodyne Canada Ltd., Dooling

Ms. Whitehead had worked at the respondent company from 1975 until her dismissal in 1983. She alleged that a new general manager to whom she reported was hired in 1981. Soon thereafter, a co-worker informed her that her new boss had indicated that he wanted to get rid of her. She further alleged that she was denied a promotion to the position of plant manager for which she was qualified and was eventually dismissed because of her sex.

There was no evidence before the board of inquiry that the complainant had been dismissed for cause. Indeed, the only evidence available suggested that she was a competent, hard-working and loyal employee who was dismissed as a result of the arbitrary decision of the general manager.

At issue was whether her dismissal was related to sex and therefore in breach of the Code. The board heard the testimony of an office employee, who stated that the general manager had never interviewed a woman for the position of plant manager in which Ms. Whitehead had expressed an interest. Another witness stated that the general manager had dwelt upon the fact that she was a woman. "As far as he was concerned, women were meant for bearing children and not much else." The board found that this evidence was sufficient to establish a violation of the Code and that the corporate and individual respondents were jointly and severally liable to compensate the complainant in the amount of $24,240 representing wages lost because of discrimination, $2,500 in general damages and $7,642 representing interest.

Age, Nationality, Race, Colour, Handicap

Armbro Holdings Ltd. and Ontario Human Rights Commission

Mr. Rossignol had filed a complaint with the Commission alleging that the termination of his employment by Armbro Holdings Ltd. had involved discrimination on the ground of age.

Prior to filing his complaint with the Commission, Mr. Rossignol commenced a civil action against Armbro Holdings Ltd. for damages for wrongful dismissal. The Company brought an application for judicial review, seeking an order from the Supreme Court of Ontario prohibiting the Commission from continuing with its investigation of Mr. Rossignol's complaint. Armbro Holdings argued that the Commission had no jurisdiction to investigate the complaint when, substantially, the same issues were the subject of the civil action in the Supreme Court.

The Court decided that it would not be a proper exercise of its discretion if it were to make an order prohibiting the Commission from continuing with its investigation because the legislature has given primary, and, in many respects, exclusive, jurisdiction to the Commission subject to very wide rights of appeal. The application was therefore dismissed.

Hope, Karr and the Corporation of the City of St. Catharines, Professional Firefighters' Association, Local 485
Whitney and the Corporation of the City of St. Catharines
Boatman and the City of Waterloo, Waterloo Fire Department
Callen and the Corporation of the City of Windsor, International Association of Firefighters, Local 455

These complaints, which were combined and dealt with in the same proceeding, alleged that the mandatory retirement of firefighters at the age of 60 is discriminatory and in violation of the right to freedom from discrimination in employment on the basis of age.

The respondent employers and unions argued as their defence that age 60 is a bona fide occupational qualification for the job. The board of inquiry stated that the Supreme Court of Canada has indicated that employers who wish to rely on this defence must prove it on the basis of statistical and medical evidence relating to the effect of aging on the capacity of firefighters to perform their duties.

According to this precedent, the board stated, the respondents must demonstrate that mandatory retirement must be imposed honestly and in good faith and be related in an objective sense to job performance. That is, the qualification must be reasonably necessary to assure the efficient and economical performance of the job without endangering the employee, his or her fellow employees or the public.

Considerable evidence was introduced by the respondents with respect to the particular responsibilities of the complainants, the conditions under which these tasks are performed and the effect of aging on physical fitness, vulnerability to heart disease and on a broad range of physical and mental capacities said to be related to the successful performance of the job.

The board was persuaded that each complainant was required, as a routine duty, to engage in active firefighting since jobs at all levels in the respondent organizations included firefighting duties. The board found that because the nature of the work is physically demanding and very stressful, the employers' requirements of the necessary levels of physical fitness and mental acuity are reasonably necessary.

The board stated that the employer had successfully established mandatory retirement at age 60 as a bona fide occupational qualification. A certain minimum level of physical fitness, which can be assessed by measuring aerobic capacity, is a necessary requirement of the job. All, or almost all, individuals aged 60 would not possess an aerobic capacity at this level. The board ruled that the evidence also established that there are no methods of testing either aerobic capacity or propensity for heart disease that are sufficiently accurate and safe that they can be imposed upon the respondents as a substitute for their compulsory retirement policy. The complaints were dismissed.

Karumanchiri, Ng, Yan and the Liquor Control Board of Ontario, Bosworth, Couillard, Parker

Mr. Karumanchiri, who is of East Indian origin, and Dr. Ng and Mr. Yan, who are of Chinese origin, are employed as senior laboratory technicians by the LCBO. They alleged that they had been denied promotions to the positions of assistant chief chemist and chief chemist, which was later designated as director of laboratory services, in favour of a lesser-qualified white employee. These complaints involved access by visible minorities to senior management positions, none of which are held by members of racial minorities.

Dr. Ng and Mr. Yan further alleged that their employer had taken reprisals against them because they had filed complaints under the Code.

The board first addressed two preliminary arguments put forward by the respondents with respect to section 10 of the Code, which deals with constructive discrimination.

The first argument was that there can be no constructive discrimination because the complainants are not members of a visible minority in their positions as laboratory technicians. Evidence was led that four of the nine technicians are of Indian, South-East Asian or Chinese descent. The board accepted that evidence, but found that the issue was access, by visible minorities who are technicians, to senior management positions, which have, allegedly, been denied them on prohibited grounds - not the employment of technicians. The board stated that the senior management positions in question are not held by visible minorities.

The second argument advanced by the respondents with respect to constructive discrimination was that the Commission does not have the power to review, generally, promotion decisions whenever a visible minority is affected, but must show a relationship between the promotion process and a prohibited ground under the Code.

The board accepted in principle the second argument put forward by the respondents. The board stated that the Commission must show that there is a group of individuals entitled to the protection of the Code and that the actions of the respondents resulted in discrimination on a prohibited ground under the Code. It is then open to the respondents to demonstrate that the requirements being challenged serve a bona fide business purpose. If the respondents satisfy that burden, the Commission may counter by showing that the bona fide purpose was pretextual and thus the requirements do not serve a bona fide business purpose.

The board heard considerable evidence regarding the educational and work backgrounds both of the complainants and of Mr. Parker, who held the contested positions. With respect to the competition for the assistant chief chemist position, the board found that "the facts are absolutely beyond question that Dr. Ng at the time of hiring possessed a deep educational background and work experience that placed him technically and in terms of conceptual capacity in a superior position to Mr. Parker."

Among the criteria employed in the selection process for the promotions in question was the assessment given to the candidate in his employee evaluations. The board was provided with an analysis of the evaluations of the complainants and Mr. Parker that were conducted from 1968 to 1978, at which time Mr. Karumanchiri and Mr. Parker were in the same category (initially, Mr. Karumanchiri had been rated a laboratory technician 5 and Mr. Parker, a laboratory technician 3). The board was of the view that the evaluations did not reflect the complexity and variety of work performed by Mr. Karumanchiri and, significantly, tended to overstate the range of work done by Mr. Parker. The board concluded that the 1978 evaluation of Mr. Parker, which had been made close to the time of competition for assistant chief chemist, was in error when it referred to his administrative capabilities. Moreover, it was in error when special mention was made of Mr. Parker's seniority. In none of the previous evaluations made of the candidates for the promotion had seniority ever been mentioned as even a factor to be considered for promotion, pay increase or assignment of duties, the board stated. The board chairman advanced an explanation for the reference to seniority: "By the end of the 10-year period from 1968 to 1978, the former chief chemist was able to bring Mr. Parker to the same classification and similar salary as Mr. Karumanchiri by means of an inflated job description. Seniority, a factor never introduced by the former chief chemist in evaluating laboratory technicians, was raised at a time when Mr. Parker and Mr. Karumanchiri, at least on paper, appeared to be performing jobs of equal quality."

Moreover, the board found that the required experience that was set out in the position description mirrored the experience of Mr. Parker as set out in his evaluations, to the exclusion of Mr. Karumanchiri.

The board was of the opinion that Mr. Couillard, a senior management official who was cited as a respondent, attempted to dissuade Mr. Karumanchiri from aspiring to the position of chief chemist. "For reasons that do not have a basis in good faith or reasonable business decisions, Mr. Couillard apparently had determined to engage in subterfuge in his dealings with Mr. Karumanchiri," the board stated. Mr. Parker had been earmarked to become the next chief chemist.

When the chief chemist retired, Mr. Parker was promoted to the position without a competition being held. The board stated that this decision was "redolent with deception and false representations that had the purpose and effect of stopping three qualified chemists, members of a visible minority, from competing for that position."

The board then addressed the two reprisal complaints. Dr. Ng and Mr. Yan had alleged that Mr. Parker transferred them from the work to which they had previously been assigned because they had filed complaints with the Commission. The board found that this action was a reprisal within the meaning of the Code, and had the effect of assigning to the two complainants work of lesser responsibility.

The board found that the rights of the complainants under sections 4, 8 and 10 of the Code had been violated by the respondents, and made the following order:

- within 45 working days from the date of the award, Mr. Karumanchiri is to be appointed director of laboratory services at the LCBO;

- Mr. Karumanchiri shall be paid the difference in salary between what he earned and what Mr. Parker earned from April 1, 1979 to the date that Mr. Karumanchiri begins to function as the director of laboratory services, with interest on this amount;

- general damages in the amount of $6,000 shall be paid by the LCBO to Mr. Karumanchiri;

- the LCBO was directed to pay the legal expenses of the complainants on a party and party basis;

- general damages in the amount of $3,000 shall be paid by the LCBO to Dr. Ng, and $1,500 to Mr. Yan. The above damages relate to the contraventions of the employment provisions of the Code;

- general damages in the amount of $1,000 each shall be paid to Dr. Ng and Mr. Yan in respect of the contraventions of the reprisal provisions of the Code.

Mr. Parker and the LCBO are appealing the decision and order to the Divisional Court of the Supreme Court of Ontario, and have filed an application for judicial review.

The Canadian Corps of Commissionaires (Toronto and Region) and Barnard, Ontario Human Rights Commission

Mr. Barnard, a man of East Indian origin, was a permanent resident but not yet a citizen of Canada at the time of his complaint. He had served with distinction in the Indian army during World War II. He alleged that the Canadian Corps of Commissionaires had refused his application for membership because he was not a Canadian citizen or a British subject, in accordance with its membership requirements at the time. A board of inquiry held that the corps had discriminated against Mr. Barnard with respect to employment on the ground of nationality.

The respondent appealed the decision in the Supreme Court of Ontario, Divisional Court. The Court dismissed the appeal and rejected the respondent's argument that the relationship between a commissionaire and the corps is not one of employment, but rather membership in a fraternal organization. The Court ruled that the corps had committed a breach of the Code, stating that:

> "One of the main functions of the corps is to make contracts with organizations to provide what I shall describe as a security service for such organizations. There can be no real doubt, in our view, when the corps makes a contract with an organization to provide services to that organization and then assigns members of the corps to perform those services, the corps is the employer of the members performing services for the corps' client. This relationship is recognized in the rules of the corps, which state: A commissionaire assigned to duty ... is an employee of the corps and will be paid by the corps."

The Court also disagreed with the respondent's argument that the exclusion of persons who were not Canadian citizens was justified on the ground that the procedures for acquiring citizenship provide some screening of newcomers to this country, and that such screening is appropriate in view of the nature of the security work performed under the contracts entered into by the corps. The Court quoted the decision of the board of inquiry in rejecting this position:

> "Citizenship does not assure the corps that the applicant is knowledgeable about the institutions where he will be working or that he is honest or loyal or industrious or not a security risk. The corps could try to ensure these attributes in other ways."

Boehm and National System of Baking, Ltd., Heagle, Pettifer, Woods

The complainant, Mr. Boehm, alleged that a new supervisor, Mr. Woods, discriminated against him by harassing him in the workplace because of his handicap, and ultimately rendered it unreasonable for him to continue work under such conditions. Mr. Boehm has a condition of mental retardation or impairment or a learning disability. Mr. Boehm also asserted that, if Mr. Woods was found to have acted in violation of the Code, the company is responsible at law for his behaviour.

This board of inquiry was the first in any jurisdiction to deal with the issue of harassment in the workplace because of handicap.

The evidence indicated that Mr. Boehm had worked for over a year at the bakery without any problems prior to Mr. Woods' arrival at the company. According to the witnesses, Mr. Boehm was an eager, willing and very good employee.

The complainant testified that Mr. Woods would deliberately confuse him in assigning work tasks, often yelled at him and told him he needed "a kick in the ass." On one occasion, a customer returned a pie because no sugar had been added to the filling, the result of an oversight on the part of Mr. Boehm. He testified that Mr. Woods called him a "retard" and a "dummy" and ordered him to eat the entire pie because it was the only way "people like these" would understand. This testimony was corroborated by co-workers and management employees. Mr. Boehm's mother complained to the company's general manager about this incident.

Mr. Woods generally denied all of the complainant's allegations and testified that Mr. Boehm gave him Christmas gifts and never complained.

Mr. Boehm's mother described the events of a day on which Mr. Boehm had returned home from work ill and upset. He visited his doctor, who testified that Mr. Boehm was extremely upset, and evidenced fear and anxiety about his work. Mrs. Boehm further stated that from the time Mr. Woods became her son's supervisor, Mr. Boehm would often come home upset, was often nervous and had begun to lose the self-confidence in his ability that had been painstakingly built up over time. It was in response to these pressures that Mr. Boehm subsequently quit his job.

Evidence introduced by the company indicated that the employer offered Mr. Boehm his job back. However, the board of inquiry stated, Mr. Boehm just could not face Mr. Woods again.

The board accepted the evidence of Mr. Boehm as to the incidents of harassment and the testimony of his family about its effects. Moreover, the complainant's testimony was generally corroborated by the testimony of other workers. Mr. Woods' actions were plainly sufficient to manifest a course of vexatious comment and conduct, in the view of the board chairman, who stated that Mr. Woods would not, and did not, treat non-handicapped employees in the harassing manner that he treated Mr. Boehm. "He was treated as inferior, as someone who did not deserve the same respect as the so-called normal employee."

The board further stated that although Mr. Woods did not intend or realize the catastrophic impact of his vexatious comments and conduct upon the complainant, knowing and intending that such actions would hurt, he must bear responsibility for all the consequences that ensued.

There was testimony to the effect that some of the incidents were legitimate forms of disciplinary actions by a supervisor. However, the board stated that there was no evidence to suggest that there was any justification for Mr. Woods' behaviour, and found that the complainant's condition of mental impairment was at least a proximate cause of the intensity and quality of the respondent's behaviour and was the sole reason for many of the derisive comments made by Mr. Woods.

In addition to finding that Mr. Woods had contravened subsection 4(2) of the Code in his treatment of Mr. Boehm, the board found National in contravention of the Code on the organic theory of corporate responsibility. This theory states that a corporate employer is personally liable for the acts of an employee where that employee is part of the "directing mind" of the corporate employer.

Having found discrimination contrary to the Code, the board ordered the respondents jointly and severally liable to pay to the complainant the sum of $340 as damages for lost wages, $3,000 as general damages for mental anguish and $549 as interest.

ACCOMMODATION

Race, Colour, Ethnic origin, Receipt of Public Assistance, Marital Status

Stevens and Salamat Investments, Felix, Jethwani

Mrs. Stevens, who is black, alleged that she and her husband were required to pay a higher deposit and rental for the party room in their apartment building than white tenants and were subjected to derogatory and sterotypical comments about black people by the superintendent of the building when they applied to rent the room. The Stevenses were also quoted a higher rental fee and deposit when they approached the landlord about the matter. Her complaint alleged discrimination with respect to accommodation because of race and colour.

When conciliation efforts failed to achieve a settlement, the Commission requested the minister to appoint a board of inquiry in the case. However, the parties reached a mutually satisfactory settlement on the day the hearing convened, and the chairman of the board of inquiry concluded the proceedings on the basis of the following agreement:

- the respondent will compensate Mr. and Mrs. Stevens in the amount of $1,000 representing general damages;
- the respondent will provide written assurances to the Commission of its policy to comply with the provisions of the Code and will post Code cards in its apartment building.

West End Construction, Ltd., Scott and the Ontario Human Rights Commission, Tabar, Lee, Lee

This case concerned an appeal by West End Construction from the decision of a board of inquiry that found that the company had discriminated against Mr. and Mrs. Lee and Mr. Tabar in the rental and occupancy of commercial space because of race, colour, ancestry and place of origin. The board had ordered that a total of $48,424 in damages be paid to the three complainants.

The Divisional Court of the Supreme Court of Ontario allowed the appeal in part, and the order of the board of inquiry was varied by setting aside the $14,326 that had been awarded to Mr. Tabar. Otherwise, the appeal was dismissed.

In its decision, the Court ruled that Mr. Tabar's complaint could not succeed because the facts on which his complaint was based occurred more than two years before the complaint was filed, in violation of the Limitations Act, which sets a two-year limitation period.

Despite the fact that Mr. Tabar's complaint was filed under the former Human Rights Code, which did not contain a limitation period, the Court held that complaints under the Code are subject to the Limitations Act. The Court further ruled that the limitation period commences to run at the time the alleged discriminatory act takes place and ceases to run when the complaint is filed. (The current Code sets out a six-month limitation period unless the Commission is satisfied that the delay in filing was incurred in good faith and no substantial prejudice would result to any person affected by the delay.)

The Commission is appealing the decision to the Ontario Court of Appeal.

Willis and David Anthony Phillips Properties, Phillips, Phillips

Ms. Willis alleged that the respondents had refused to rent an apartment to her because she was receiving public assistance. In her testimony before the board of inquiry, she described the events that followed her application for an apartment in response to a newspaper advertisement. She stated that she completed an application form, which included a question about the amount and source of her income, and gave Mrs. Phillips one month's rent. She further testified that Mrs. Phillips told her that the apartment was available on August 15, and that she could have it if she paid a second month's rent on or before that date. Ms. Willis was given permission to clean the apartment on the weekend of August 11 and 12.

The complainant further testified that she and her mother, from whom she had borrowed money to pay the second month's rent, went to the respondent's office on August 15 to pay the rent and finalize the rental agreement. Mr. Phillips, who was alone in the office, informed her that he would not rent the apartment to someone on mother's allowance or welfare.

Ms. Willis stated that she went to the apartment on August 15, prepared to move in her belongings, on the advice of her lawyer. However, Mr. Phillips was on the premises and refused her entry.

This evidence was supported by the testimony of Ms. Willis' mother and the friends who helped her to clean the apartment.

Mr. and Mrs. Phillips denied the allegations and testified that 80 per cent of their tenants were in receipt of some form of public assistance. They also stated that they followed a strict policy of requiring the payment of two months' rent in advance before an application is accepted. Mrs. Phillips denied any suggestion that she had told Ms. Willis that the apartment would be held for her until August 15, and could not remember Ms. Willis requesting permission to clean the apartment.

Mr. Phillips' account of the conversation between himself and Ms. Willis on August 15 differed substantially from the accounts given by Ms. Willis and her mother. He claimed that Ms. Willis had made up a story about not having the second month's rent and wanted to make a deal with him. During his testimony, he asserted his low regard for many welfare and mother's allowance recipients by referring to Ms. Willis and saying that he had "seen people like her give their children away."

The board chairman noted that the case essentially involved a question of credibility. At issue was whether Ms. Willis was refused the apartment because she was in receipt of public assistance or because she had failed to pay the second month's rent.

The board reviewed the evidence provided and stated that the respondents' assertions that most of their tenants received public assistance and that they followed a policy of renting to any tenant who pays two months' rent in advance, were uncontroverted. However, the board found that the respondents' evidence contained weaknesses and inconsistencies that were significantly greater than those in the evidence provided in support of the complaint, and the board was satisfied on the balance of probabilities that the refusal was due to the fact that Ms. Willis was in receipt of public assistance.

Having upheld the allegations, the board made the following order:

- the respondents were ordered to pay the complainant the amount of $275.79 as special damages, representing the out-of-pocket expences she incurred as a result of discrimination, and $1,000 as general damages for the mental anguish she suffered;

- the respondents were also directed to post Code cards at all business premises owned or occupied by them.

Ontario Human Rights Commission and Kennedy Towers

The Commission initiated this complaint on behalf of a woman who alleged that the respondent initially refused to rent to her on the grounds that she was single and did not have a co-signer for her lease.

Ultimately, she became a tenant without a co-signer. However, the Commission was seized with the issue of whether the requirement of a co-signer to the lease of an unmarried tenant or the refusal to rent to a single person would constitute an infringment of his or her rights under the Code.

In his testimony, the owner of the building denied that he discriminated against single persons. He explained that co-signers were required when the management had doubts about the financial responsibility of a prospective tenant, whether he/she was married or single. He produced a list of 23 names of persons who he said were single tenants of the building. Only two of them had been required to obtain co-signers.

The board of inquiry held that if the requirement of a co-signer applied only to single persons, it would contravene the Code. However, the board found on the facts that the requirement of a co-signer was invoked only when the owners of Kennedy Towers doubted the financial reliability of a potential tenant, regardless of his or her marital status. On this basis, the board dismissed the complaint.

GOODS, SERVICES, FACILITIES, CONTRACTS

Age, Marital Status, Sex, Race, Colour, Citizenship, Ethnic Origin, Handicap

Zurich Insurance Co. and Ontario Human Rights Commission, Bates

Mr. Bates, a 20-year old single man, had alleged that although he had had no driving accidents and had never received any demerit points, he was informed by the respondent that he must pay higher rates than those paid by women, married men in his age group and single men who were 25 years of age or older.

The board of inquiry examined the legal soundness of the insurance industry's rate classification system, which uses such factors as age, sex and marital status to determine automobile insurance premium rates. The board concluded that although the insurance industry has acted in good faith (having developed its present system for business and economic reasons), "the current automobile driver classifications of unmarried male drivers under 25 contravene the Code" and that the present rate classifications are not based on reasonable and bona fide grounds.

The respondent appealed the decision to the Divisional Court of the Supreme Court of Ontario.

The Court allowed the appeal and set aside the decision of the board of inquiry. The Court's decision stated that the criteria based on age, sex and marital status for drivers under 25 have historically been an important consideration on which rate structures have ultimately been established within the insurance industry: "While doubts may exist that the present system need be continued, it was, in 1983, and is, still, the only game in town."

The Court stated: "It is our view that the distinctions created by the classification system are reasonable distinctions based on age, sex and marital status. The available statistical information demonstrates clearly that the single male driver under 25 years of age is the highest risk classification. ...it appears reasonable that the groups causing the highest loss costs should pay the highest premium."

Counsel for the Commission contended that to rate the complainant as a high risk driver simply because he is an unmarried male in the 19- to 20-year-age group is unfair; while many in the group may represent higher risks, the complainant may not and, in fact, he may be a much better risk than the other members of his group. However, the Court concluded that it is inevitable that in every class there will be drivers who represent worse or better risks than average; nonetheless, the premium must be based on the average.

The Commission has been granted leave to appeal this decision to the Ontario Court of Appeal.

Ontario Human Rights Commission and the Ministry of Education

The Commission had initiated a complaint against the ministry because of a policy that foreign students attending secondary schools in Ontario while on student visas are not eligible to receive the Ontario Scholarship. The complaint alleged that this policy is in contravention of the Code in respect of persons identified by race, colour, citizenship, ancestry, place of origin, ethnic origin and family status.

The board of inquiry rendered an interim decision with respect to an application made by counsel for the respondent, who requested the names of persons from whom complaints about the policy were received and the names of persons who had requested the Commission to initiate a complaint against the ministry.

The board decided as follows, on the basis of Ontario case law:

- a complaint of discrimination must contain all the essential elements, including identification of the complainant and the victim or the class being discriminated against;
- the respondent must be aware of all matters that form a substantial part of the facts material to the issues. Evidence in support of those facts need not be divulged;
- the respondent must be provided with sufficient information to allow it to prepare to meet all the allegations against it.

The board concluded that the complaint in question satisfied these criteria, and therefore held that further particulars were inappropriate and need not be provided by the Commission. The respondent's application was dismissed.

Blainey and the Metro Toronto Hockey League

The Court of Appeal ruled during the fiscal year that section 19(2) of the Human Rights Code, 1981, was unconstitutional and of no force and effect. This section was repealed in December 1986.

The Court's decision was rendered on April 17, 1986 in a case concerning Justine Blainey, a young woman who, at the age of 12 years, was not permitted to play hockey for a team in the Metro Toronto Hockey League because the regulations of the Ontario Hockey Association restrict eligibility for membership to male persons.

In a two-one split decision, the Court ruled that section 19(2) of the Code, which permitted discrimination in all athletic activities because of sex, was inconsistent with the equality rights provision of the Canadian Charter of Rights and Freedoms and could not be defended as a reasonable limit under section 1 of the Charter.

The Court noted that a distinction based on public decency or for the physical protection of participants would be reasonable, but no such legislative purpose was disclosed by the broad language of section 19(2), which prescribed no limits and provided no guidelines.

The Court also noted that there was no evidence before the Court that males were being denied the right to full membership or participation in athletic organizations. Therefore, the Court was of the view that section 19(2) resulted also in adverse effect discrimination against females.

With the Court's declaration that section 19(2) of the Code was unconstitutional, Justine Blainey was afforded the right to pursue her complaint before the Commission.

The Ontario Hockey Association's application for leave to appeal to the Supreme Court of Canada was denied.

Mary Beth Hickling, by Dianne and John Hickling; Paige Horbay, by Irene and Henry Horbay; Maureen Legris, by Marian and Harry Legris and the Lanark, Leeds and Grenville County Roman Catholic Separate School Board

The three complainants are children, each classified as a trainable mentally retarded pupil. The complaints were filed by their respective parents, who are separate school supporters. Two of the three children (Paige Horbay and Maureen Legris) were required by the respondent school board to spend approximately three-quarters of each school day in local public schools designed to cater to the special educational needs of mentally retarded students. The remaining quarter of the school day was spent in the denominational separate school. The third child, Mary Beth Hickling (who is less severely handicapped), spent about 50 percent of the school day in the public school and the other half at the separate school.

All non-handicapped children of separate school supporters living in the area were allowed to register and attend separate school full time, if their parents so wished. The Commission and the complainants maintained that because the children were excluded from the separate school for much of the day, they were being denied a Catholic education because of handicap, contrary to their right under the Code to equal treatment with respect to services and facilities without discrimination. The respondent did not deny that the children were treated differently from other children of separate school supporters in the provision of educational services and facilities because of their handicap.

However, the school board argued that there was no violation of the Code as the children were allowed sufficient time in Catholic schools to receive a Catholic education. Moreover, if they were denied a Catholic education, such a denial was not discriminatory because they received services that the respondent reasonably decided were of greater educational importance to the children. The school board also claimed that the complainants' real objective was to integrate the children into regular classrooms rather than to provide a Catholic education. Finally, the school board claimed that the Education Act explicitly authorized the behaviour of the respondent and, alternatively, if the Code has been breached, the children were accommodated as far as possible without incurring undue hardship.

The board of inquiry held, on the basis of the evidence, that:

- the children were denied a full Catholic education because they are mentally handicapped, contrary to the Code;

- the fact that the complainants' prime objective was to integrate their children into regular classrooms rather than provide a Catholic education is irrelevant if a right to equal treatment under the Code has been violated;

- pursuant to section 46(2), the Code prevails over inconsistent provisions of other legislation, including the Education Act, unless a "notwithstanding" clause exists in the other legislation; and

- the respondents did not make reasonable efforts to accommodate the complainants short of undue hardship, pursuant to section 40(2) of the Code.

Based on the above findings, the board ordered that the respondent separate school board must register Maureen and Paige and that it must provide them with a Catholic education beginning on October 1, 1986. There was no order respecting Mary Beth as she is now enrolled at the secondary school and is receiving an identical education to any other student.

The respondent is appealing this decision to the Divisional Court of the Supreme Court of Ontario.

Kellerman and Al's Restaurant and Tavern

The complainant, John Kellerman, has cerebral palsy, a condition that severely impairs his physical movements and speech. In his complaint, he alleged that he was denied equal treatment with respect to services by the respondent restaurant and its owner, George Zarafonitis, because of his physical handicap.

Mr. Kellerman alleged that he drove his motorized wheelchair to the restaurant and was assisted into the dining room by some customers. He ordered lunch and a glass of wine. He was served the meal, but not the wine. Before he had finished eating, Mr. Kellerman said he was "roughly" escorted out of the restaurant by the owner. This evidence was generally supported by the waitress who had served him. Mr. Zarafonitis testified that he had told the waitress not to serve the wine as he believed that Mr. Kellerman was in an intoxicated condition.

The board chairman explained that those who serve liquor must be educated about the manifestations of handicaps like the complainant's, and therefore concluded that Mr. Zarafonitis was negligent in assuming that Mr. Kellerman was intoxicated.

The board also found that the complainant was discriminated against in being escorted out of the restaurant before he wished to leave. The board chairman indicated that it appeared Mr. Zarafonitis may have been upset at the mess created by Mr. Kellerman while he ate, and for this reason, and in order not to upset his other customers, he, in a very firm and determined manner, made the complainant leave against his will. The board concluded that these two incidents violated the Code as they resulted in Mr. Kellerman's being denied equal treatment with respect to a service because of his handicap.

In assessing the appropriate damages, the board took into account that Mr. Kellerman was "extremely enraged," claimed that his "integrity was damaged" and was "tired of being pushed around." Therefore, the board awarded him $500 (including interest) for his "hurt feelings and damaged integrity."

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TABLE 1 - Complaints Received by Region of Registration and Ground: 1986/87

Ground: Region:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Others*	**Total**	Region % of Total
Eastern	14 (8)	7 (4)	7 (4)	33 (20)	12 (7)	12 (7)	7 (4)	3 (2)	68 (40)	6 (4)	**169** (100)	(10)
Hamilton/Niagara	16 (10)	5 (3)	3 (2)	30 (19)	18 (11)	22 (14)	8 (5)	8 (5)	39 (25)	9 (6)	**158** (100)	(9)
Northern	20 (8)	4 (2)	4 (2)	49 (20)	17 (7)	43 (17)	15 (6)	7 (3)	84 (29)	6 (6)	**249** (100)	(14)
Southwestern	40 (16)	9 (4)	4 (2)	41 (16)	23 (9)	25 (10)	7 (3)	9 (4)	89 (33)	8 (3)	**255** (100)	(15)
U.F.H.	-	-	-	1 (1)	-	1 (1)	-	-	86 (96)	2 (2)	**90** (100)	(6)
Toronto Central	79 (24)	26 (8)	13 (4)	38 (12)	17 (5)	50 (15)	6 (2)	8 (2)	86 (26)	5 (2)	**328** (100)	(18)
Toronto East	41 (16)	9 (3)	2 (1)	31 (12)	30 (12)	31 (12)	9 (3)	9 (3)	89 (33)	12 (5)	**263** (100)	(15)
Toronto West	42 (19)	6 (3)	6 (3)	23 (11)	14 (6)	15 (7)	8 (4)	10 (5)	81 (37)	10 (5)	**215** (100)	(13)
Total (%)	252 (15)	66 (4)	39 (2)	246 (14)	131 (8)	199 (11)	60 (3)	54 (3)	622 (37)	58 (3)	**1727** (100)	(100)

TABLE 2 - Employment Complaints Received by Region of Registration and Ground: 1986/87

Eastern	12 (9)	5 (4)	6 (5)	25 (19)	11 (8)	9 (7)	4 (3)	1 (1)	59 (44)	-	**132** (100)	(9)
Hamilton/Niagara	11 (9)	4 (3)	2 (2)	29 (23)	18 (15)	18 (15)	4 (3)	3 (2)	34 (27)	1 (1)	**124** (100)	(9)
Northern	5 (2)	3 (1)	1 (-)	44 (21)	17 (8)	40 (20)	10 (5)	3 (1)	81 (42)	1 (-)	**205** (100)	(15)
Southwestern	32 (16)	3 (1)	3 (1)	36 (17)	21 (10)	22 (11)	3 (1)	2 (1)	83 (42)	-	**205** (100)	(15)
Toronto**	138 (19)	27 (4)	20 (3)	87 (12)	57 (8)	88 (12)	11 (1)	6 (1)	302 (39)	4 (1)	**740** (100)	(52)
Total (%)	198 (14)	42 (3)	32 (2)	221 (16)	124 (9)	177 (13)	32 (2)	15 (1)	558 (40)	6 (-)	**1406** (100)	(100)

* Public Assistance, Record of Offences, Sexual Orientation, Reprisal, Breach of Settlement, and No Ground (Sec. 33).

** Total for the four Regions in Metro Toronto (TC; TE; TW; and U.F.H.)

TABLE 3 - Complaints Received by Region of Registration and Ground: 1985/86

Ground:

Region:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Others *	**Total**	Region % of Total
Eastern	16 (11)	5 (3)	4 (3)	33 (23)	14 (10)	8 (6)	5 (3)	2 (1)	54 (37)	4 (3)	**145** (100)	(11)
Hamilton/Niagara	15 (8)	3 (1)	5 (3)	23 (12)	14 (7)	20 (10)	9 (5)	7 (4)	84 (44)	12 (6)	**192** (100)	(14)
Northern	19 (12)	3 (2)	1 (1)	24 (16)	19 (12)	12 (8)	9 (6)	5 (3)	54 (35)	8 (5)	**154** (100)	(11)
Southwestern	35 (18)	8 (4)	3 (1)	35 (18)	24 (12)	27 (14)	5 (2)	11 (5)	46 (23)	7 (3)	**201** (100)	(15)
Toronto Central	59 (20)	18 (6)	13 (4)	47 (16)	21 (7)	37 (13)	10 (4)	5 (2)	73 (25)	9 (3)	**293** (100)	(22)
Toronto East	41 (21)	2 (1)	8 (5)	33 (17)	18 (9)	16 (8)	2 (1)	2 (1)	62 (32)	8 (5)	**191** (100)	(14)
Toronto West	45 (25)	9 (5)	6 (3)	13 (7)	11 (6)	20 (11)	10 (6)	2 (2)	58 (32)	6 (3)	**180** (100)	(13)
Total (%)	230 (17)	48 (4)	40 (3)	208 (15)	121 (9)	140 (10)	50 (4)	34 (2)	431 (32)	54 (4)	**1356** (100)	(100)

TABLE 4 - Employment Complaints Received by Region of Registration and Ground: 1985/86

Region:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Others *	**Total**	Region % of Total
Eastern	12 (11)	2 (2)	3 (2)	29 (27)	14 (13)	6 (6)	1 (-)	2 (2)	40 (37)	-	**109** (100)	(10)
Hamilton/Niagara	13 (9)	2 (2)	5 (3)	22 (15)	14 (9)	20 (13)	1 (-)	4 (3)	70 (46)	-	**151** (100)	(14)
Northern	9 (7)	2 (2)	1 (1)	17 (15)	19 (16)	12 (10)	6 (3)	1 (1)	53 (45)	-	**120** (100)	(11)
Southwestern	24 (17)	5 (3)	2 (1)	28 (19)	24 (17)	21 (14)	2 (1)	1 (1)	37 (26)	2 (1)	**146** (100)	(14)
Toronto **	123 (22)	20 (4)	17 (3)	84 (15)	51 (9)	65 (12)	12 (2)	6 (1)	171 (31)	4 (1)	**553** (100)	(51)
Total (%)	181 (17)	31 (3)	28 (3)	180 (17)	122 (11)	124 (11)	22 (2)	14 (1)	371 (34)	6 (1)	**1079** (100)	(100)

* Public Assistance, Record of Offences, Reprisal and Breach of Settlement, and No ground (Sec.33).

** Total for the three Metro Toronto Regions: UFH is included in Toronto Central.

TABLES ON COMPLAINTS RECEIVED

Tables 1 to 9 detail the number and type of complaints received by the Commission, indicating the level of Code usage by the public in Ontario. Tables are shown for fiscal years 1986/87 and 1985/86 for comparison purposes.

TABLES 1 AND 3 - Complaints received by Region of Intake and Ground: 1986/87

These tables cover complaints received in terms of:

- regions of the province where complaints were registered;
- grounds of discrimination quoted in complaints.

In 1986/87 the three Metro Toronto regions and U.F.H. combined, received 899 complaints or 52 per cent of the overall total, while the four regions outside Metro received 832 or 48 per cent.

Allegations on the grounds of race and ethnic origin constituted 23 per cent of the Metro total of complaints compared to 14 per cent in the Regions, while the percentages for complaints of sex and sexual harassment were 17 per cent in Metro and 27 per cent in the Regions. The percentages of complaints in all other grounds were similar in both Metro and the Regions.

These patterns are similar to those observed in 1985/86.

TABLES 2 and 4 - Employment Complaints received by Region of Intake and Ground: 1986/87

These tables cover employment-related complaints only.

Employment complaints received in 1986/87 show trends similar to those described above, for tables 1 and 3.

TABLE 5 - Complaints Received by Ground and Provision, 1986/87

Code Provisions:	Ground: Race/Colour	Ethnic Origin	Creed	Sex*	Sexual Orientation**	Sexual Harassment	Age*	Marital Status*	Family Status*	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal/Breach of Settlement	No Ground (Sec. 33)	Total	Provision % of Total
Services	32	14	5	17	1	-	8	13	9	48	-	-	-	3	150	9
Accommodation	16	8	1	5	-	7	13	12	27	11	13	-	-	-	113	7
Contracts	1	-	1	3	-	-	-	3	2	3	-	-	-	-	13	1
Employment	198	42	32	221	1	124	177	32	15	558	-	4	-	2	1,406	80
Vocational Associations	4	2	-	-	-	-	1	-	1	2	-	-	-	1	11	1
Reprisal	1	-	-	-	-	-	-	-	-	-	-	-	26	-	27	2
Breach of Settlement	-	-	-	-	-	-	-	-	-	-	-	-	7	-	7	-
Total	**252**	**66**	**39**	**246**	**2**	**131**	**199**	**60**	**54**	**622**	**13**	**4**	**33**	**6**	**1,727**	100
Ground % of Total	15	4	2	14	-	8	11	3	3	37	1	-	2	-	100	
Extension of Code Provisions Also Cited in Complaints:																
Constructive Discrimination3		1	3	7	-	1	3	3	1	5	-	-	1	-	28	23
Association Discrimination4		2	1	6	-	-	-	3	3	4	1	-	-	-	24	20
Announced Discrimination	1	-	-	-	-	-	-	-	2	-	-	-	-	-	3	2
Advertising	-	1	-	2	-	-	2	2	-	-	-	-	-	-	7	6
Application Forms	-	-	-	15	-	-	26	9	-	9	-	-	-	-	59	49
Total	8	4	4	30	-	1	31	17	6	18	1	-	1	-	121	100

* Grounds extended as of 18/12/86.
** New ground, as of 18/12/86.

TABLE 6 - Complaints Received by Ground and Provision, 1985/86

Code Provisions: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal/Breach of Settlement	No Ground (Sec. 33)	**Total**	Provision % of Total
Services	20	15	8	21	-	2	10	2	49	1	-	-	8	**136**	10
Accommodation	25	2	3	2	-	9	18	18	10	20	-	-	-	**107**	8
Contracts	4	-	1	1	-	3	-	-	1	-	-	-	-	**10**	1
Employment	181	31	28	182	121	124	22	14	371	-	3	-	3	**1,080**	80
Vocational Associations	-	-	-	1	-	2	-	-	-	-	-	-	-	**3**	-
Reprisal	-	-	-	1	-	-	-	-	-	-	-	17	-	**18**	1
Breach of Settlement	-	-	-	-	-	-	-	-	-	-	-	2	-	**2**	-
Total	**230**	**48**	**40**	**208**	**121**	**140**	**50**	**34**	**431**	**21**	**3**	**19**	**11**	**1,356**	100
Percentage	17	4	3	15	9	10	4	2	32	2	-	1	1	100	
Extension of Code Provisions Also Cited in Complaints:															
Constructive Discrimination	1	1	1	10	-	-	-	-	3	-	-	-	-	**16**	26
Association Discrimination	9	-	1	1	-	1	4	-	5	1	-	-	-	**22**	36
Announced Discrimination	-	-	-	1	-	-	-	-	-	-	-	-	-	**1**	2
Advertising	-	-	-	1	-	1	-	-	-	-	-	-	-	**2**	3
Application Forms	1	-	-	4	-	5	2	1	4	-	-	-	-	**17**	28
Employment Agencies	-	-	-	1	-	-	-	-	2	-	-	-	-	**3**	5
Total	11	1	2	18	-	7	6	1	14	1	-	-	-	**61**	100

TABLES 5 and 6 - Complaints Received by Ground and Provision, 1986/87

These tables cover complaints received in terms of:

- code prohibitions quoted in complaints;
- grounds of discrimination quoted in complaints;
- extension of Code prohibitions also quoted in complaints.

A total of 1,727 complaints were received in 1986/87, an overall increase of 27 per cent over the 1,356 received in 1985/86. As seen from tables 1 and 5, this increase was more marked in Metro Toronto, with an increase of 35 per cent in the Metro regions and 20 per cent in the regions outside Metro.

This significant increase in the number of complaints was observed in practically all grounds.

Complaints on the ground of handicap continued to constitute the largest percentage of the total, at 37 per cent, followed by sex and sexual harassment combined at 22 per cent and race and ethnic origin combined at 19 per cent.

With respect to areas of coverage, employment-related complaints comprised 80 per cent of the total, service complaints 9 per cent, accommodation complaints 7 per cent and the other areas combined 4 per cent. By comparison, the 1985/86 figures were 80 per cent, 10 per cent, 8 per cent and 2 per cent respectively.

TABLE 7 - Complaints Received by Type of Handicap and Provision, 1986/87 (1985/86)

Provision:	1986/87							1985/86						
Handicap:	Services	Accommodation	Contracts	Employment	Vocational Associations	**Total**	% of Total	Services	Accommodation	Contracts	Employment	Vocational Associations	**Total**	% of Total
Sensory (vision/hearing/speech/etc. impairments)	8	-	-	30	-	**38**	6	12	1	-	32	-	**45**	10
Respiratory (asthma/lung diseases/etc.)	2	-	-	20	-	**22**	4	-	-	-	15	-	**15**	3
Limbs and Digits (amputation/impairment of limb/digit/etc.)	2	-	-	90	-	**92**	15	3	1	-	57	-	**61**	15
Cardiovascular (heart disease/hypertension/stroke/etc.)	3	-	1	23	-	**27**	4	2	1	-	10	-	**13**	3
Neuromuscular (dystrophy/sclerosis/cerebral palsy/quadriplegia/etc.)	10	3	-	10	-	**23**	4	14	2	-	10	-	**26**	6
Neurological (epilepsy/seizures/brain injury/etc.)	3	2	-	20	-	**25**	4	5	1	-	18	-	**24**	6
General Diseases or Disorders (back injuries/ allergies/cancer/diabetes/sick leave, etc.)	10	1	-	208	1	**220**	35	7	2	1	140	-	**150**	35
Miscellaneous (multiple handicaps/obesity/etc.)	1	2	-	79	-	**82**	13	2	-	-	31	-	**33**	8
Learning Disability (dyslexia/etc.)	-	-	-	2	-	**2**	-	1	-	-	-	-	**1**	-
Mental Retardation (or mental impairment)	2	2	-	-	-	**4**	1	1	-	-	1	-	**2**	-
Mental Disorder (pyschiatric illness/ personality disorders/a-dictions/etc.)	6	1	2	34	1	**44**	7	2	2	-	36	-	**40**	9
Record of claim under the Worker's Compensation Act	1	-	-	42	-	**43**	7	-	-	-	21	-	**21**	5
Total	**48**	**11**	**3**	**558**	**2**	**622**	100	**49**	**10**	**1**	**371**	-	**431**	100
Percentage	8	2	-	90	-	100		12	2	-	86	-	100	

TABLE 7 - Complaints Received by Type of Handicap and Provision, 1986/87

This table identifies complaints alleging discrimination because of handicap and details the types of handicap involved, comparing the situation in fiscal years 1986/87 and 1985/86.

During 1986/87 complaints citing the ground of handicap increased by 45 per cent over 1985/86. General Diseases or Disorders were cited in 35 per cent of the total handicap complaints, followed by Impairments of Limbs and Digits at 15 per cent, and Miscellaneous conditions at 13 per cent, with other categories registering lower percentages. Complaints based on Record of Claim Under the W.C.A., a new ground introduced in 1985/86, registered 43 or 7 per cent of the total.

TABLE 8 - Complaints Received by Sex of Complainant and Ground

Males 1985/86	Males 1986/87		Females 1986/87	Females 1985/86
146	151	Race/Colour	97	83
33	40	Ethnic Origin	25	14
25	25	Creed	12	15
56	54	Sex	178	148
4	6	Sexual Harassment	125	116
-	1	Sexual Orientation	1	-
93	100	Age	73	45
20	10	Marital Status	46	27
9	16	Family Status	35	25
255	362	Handicap	251	175
6	4	Public Assistance	9	15
3	3	Record of Offences	1	-
14	18	Reprisal	8	3
2	2	Breach of Settlement	4	-
7	3	No Grounds (Section 33)	3	4
673	795	Totals *	868	670
50%	48%		52%	50%

* The difference between the totals on this table and on Tables 1 and 5 represents the complaints initiated by the Commission.

TABLE 8

Female complainants filed 838 complaints, or 52 per cent of the total, while males filed 795, or 48 per cent. However, this difference is due to the much larger number of complaints filed by females on the grounds of sex, sexual harassment, marital and family status; practically on all other grounds males filed substantially more complaints.

Complaints dealing with pregnancy-related situations are included in the ground of "sex," and numbered 53.

TABLE 9 - Commission-Initiated Complaints by Ground, 1986/87 (1985/86)

	1986/87	1985/86
Race/Colour	4	1
Ethnic Origin	1	1
Creed	2	-
Sex	14	4
Sexual Harassment	-	1
Age	26	2
Marital Status	4	3
Family Status	3	-
Handicap	9	1
Reprisal/Breach of Settlement	1	-
Total	64	13

TABLE 9

Where the Commission is made aware of apparent violations of the Code not necessarily related to individual victims, but with policy implications, the Code provides for the initiation of complaints under which the situation can be fully investigated.

The following examples illustrate the types of complaints initiated by the Commission in 1986/87.

- A Separate School Board was reported to have a purchasing policy giving preference to Catholic supporters of the Board. Settlement of the matter was reached upon cancellation of this policy.
- A newspaper was publishing job advertisements with requirements based on sex, age and ancestry. As settlement, the paper implemented a practice of screening ads to ensure compliance with the Code.
- Allegations that a car-rental agency discriminated against Native Indians were tested, but not substantiated.
- Numerous instances of employment application forms containing questions in violation of the Code (mostly on grounds of age, sex and handicap), leading to review and change of such forms.

- Allegations that a policy requiring applications for permanent financial assistance to be made in person is constructively discriminatory against Native Indian residents of remote communities. This is so because the residents only have direct access to representatives of the financial assistance program when the representative visits the community, every three months. Case in progress.

- Allegations that the administration of drug-use tests to job applicants is discriminatory against handicapped persons who may be rejected because they take prescription drugs. Case in progress.

- Allegations that a funding policy giving preference to Ontario graduates restrict the professional and employment opportunities for graduates from other countries and therefore is constructively discriminatory on the basis of place of origin.

TABLE 10 - Complaints Closed by Disposition and Ground, 1986/87

Ground: Disposition:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement/No Grounds	Total - %
Not Pursued (Section 33)	10 3%	3 5%	- -	7 3%	2 1%	24 11%	- -	1 2%	9 2%	- -	- -	5 19%	**61** 4%
Settled	166 57%	25 45%	36 60%	153 68%	89 67%	121 57%	40 70%	35 72%	352 69%	19 83%	- -	9 33%	**1045** 64%
Dismissed	70 24%	24 43%	14 23%	30 13%	20 15%	37 18%	6 11%	4 8%	74 14%	3 13%	1 100%	8 29%	**291** 17%
Withdrawn	47 16%	4 7%	10 17%	37 16%	23 17%	29 14%	11 19%	9 18%	74 15%	1 4%	- -	5 19%	**250** 15%
Total	**293**	**56**	**60**	**227**	**134**	**211**	**57**	**49**	**509**	**23**	**1**	**27**	**1647** 100%

TABLE 11 - Complaints Closed by Disposition and Ground, 1985/86

Ground: Disposition:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal	Breach of Settlement/ No Grounds	**Total - %**
Not Pursued) (Section 33)	3 1%	- -	3 9%	2 1%	1 1%	6 5%	- -	- -	6 2%	- -	- -	- -	3 75%	**24** 2%
Settled	128 55%	18 43%	20 57%	139 73%	77 74%	62 53%	34 83%	23 85%	197 65%	14 93%	3 75%	9 56%	-	**724** 64%
Dismissed	62 27%	20 48%	10 28%	17 9%	13 12%	28 24%	-	-	41 14%	1 7%	-	3 19%	1 25%	**196** 18%
Withdrawn	38 17%	4 9%	2 6%	32 17%	13 13%	22 18%	7 17%	4 15%	58 19%	-	1 25%	4 25%	- -	**185** 16%
Total	**231**	**42**	**35**	**190**	**104**	**118**	**41**	**27**	**302**	**15**	**4**	**16**	**4**	**1,129** 100%

TABLES ON COMPLAINTS CLOSED

Tables 10 to 18 detail the numbers and types of complaints disposed of during fiscal year 1986/87, as well as the nature of dispositions and settlements achieved.

TABLES 10 and 11 - Complaints Closed by Disposition and Ground, 1986/87

These tables cover complaints closed in terms of:

- type of disposition;
- ground of discrimination.

In 1986/87 a total of 1,647 complaints were closed, a 46 per cent increase over 1985/86.

Settlements were reached in 64 per cent of the cases closed, while 17 per cent were "Dismissed," 15 per cent were "Withdrawn" and 4 per cent were "Not pursued" (under section 33 of the Code).

Table 10 also indicates the rates at which cases were settled, dismissed or withdrawn according to grounds.

Reconsiderations

Following a Commission decision not to appoint a board of inquiry, Section 36 of the Code entitles a complainant to request a review of this decision based on the presentation of material which may affect the original decision.

During 1986/87, 87 requests for reconsideration were received and 77 completed. At the end of the fiscal year, 58 requests were being processed.

By comparison, 57 requests were received and 49 completed during 1985/86.

Caseload in Process

The caseload brought forward from 1985/86 was 1,734. During 1986/87, 1,727 cases were received and 1,647 closed, leaving a balance of 1,814 under processing at the end of the fiscal period.

TABLE 12 - Settlements Effected by Ground, 1986/87

Ground: \ Settlement:	Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Change of Practices, Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$252,678	60	26	31	8	14	31	17	28	64
Ethnic Origin	22,750	3	4	1	-	-	7	-	-	9
Creed	60,556	15	6	4	-	2	10	7	1	14
Sex & Pregnancy	98,137	56	16	5	4	6	34	17	13	56
Sexual Harassment	81,266	59	1	-	-	14	28	12	15	49
Age	674,361	40	16	2	-	6	15	8	12	34
Marital Status	16,470	15	6	-	-	1	4	6	2	7
Family Status	8,392	8	7	-	-	1	6	2	1	13
Handicap	418,283	145	99	16	1	7	62	39	28	101
Receipt of Public Assistance	715	2	6	3	-	1	5	-	2	10
Record of Offences	-	-	-	-	-	-	-	-	-	-
Reprisal/Breach/No Grounds	4,250	3	1	1	-	-	-	2	1	2
Total	**$1,637,635**	**401**	**189**	**37**	**13**	**51**	**209**	**105**	**108**	**359**

TABLE 13 - Settlements Effected by Ground, 1985/86

Settlement: Ground:	Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Change of Practices, Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$164,936	41	23	11	7	9	37	12	20	56
Ethnic Origin	2,200	3	4	3	-	1	3	-	7	7
Creed	12,085	5	5	-	-	2	7	3	4	4
Sex	132,295	63	32	16	1	15	44	19	13	42
Sexual Harassment	105,245	59	3	2	1	5	26	12	20	48
Age	144,325	23	15	6	-	2	20	7	5	27
Marital Status	6,971	5	6	2	-	-	15	1	-	11
Family Status	4,814	6	7	4	-	-	5	2	3	11
Handicap	457,996	88	57	24	-	6	33	23	21	49
Receipt of Public Assistance	414	2	3	5	-	-	2	-	3	4
Record of Offences	-	-	-	1	-	-	-	1	-	1
Reprisal	19,000	4	1	-	-	1	1	4	1	2
Total	**$1,050,281**	**299**	**156**	**74**	**9**	**41**	**193**	**84**	**97**	**262**

TABLES 12 and 13 - Settlements effected by Ground, 1986/87

The purpose of settlements under the Code is two-pronged: to provide systemic remedies aimed at establishing an eventual discrimination-free environment, and provide remedy to individual victims of discrimination for their material and psychological losses.

During 1986/87, in the area of systemic remedies, there were 209 instances of changes of practices and policies, 51 educational seminars with respondents and 13 affirmative action measures implemented.

In the area of individual remedies, out of 1,045 settlements, 401 or 38 per cent of complainants received monetary compensation in the total amount of $1,637,635; 226 (or 22%) received offers of jobs or facilities or of the next available jobs or facilities. In addition, 108 (or 10%) received letters of apology, an apparently minor action but of great significance to many deeply hurt complainants.

Table 14 - Complaints Closed by Disposition, Ground and Provision, 1986/87

Disposition: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement/No Grounds	**Total**	Percentage
							EMPLOYMENT							
Settled	126	16	28	142	89	104	24	16	310	-	-	-	**855**	64
Dismissed/Not Pursued	64	17	12	35	22	58	1	4	66	-	1	2	**282**	21
Withdrawn	38	2	9	34	23	27	5	2	66	-	-	2	**208**	15
Sub-Total	228	35	49	211	134	189	30	22	442	-	1	4	**1345**	100
							ACCOMMODATION							
Settled	20	5	2	2	-	13	7	17	11	19	-	-	**96**	77
Dismissed/Not Pursued	2	1	-	-	-	-	3	-	1	3	-	-	**10**	8
Withdrawn	4	1	-	1	-	1	3	6	2	1	-	-	**19**	15
Sub-Total	26	7	2	3	-	14	13	23	14	23	-	-	**125**	100
							SERVICES							
Settled	18	4	5	8	-	4	8	1	30	-	-	1	**79**	56
Dismissed/Not Pursued	11	9	2	2	-	-	2	1	15	-	-	5	**47**	33
Withdrawn	2	1	1	1	-	1	2	1	6	-	-	-	**15**	11
Sub-Total	31	14	8	11	-	5	12	3	51	-	-	6	**141**	100
							CONTRACTS/VOCATIONAL ASSOCIATIONS/REPRISAL/BREACH OF SETTLEMENT							
Settled	2	-	1	1	-	-	1	1	1	-	-	8	**15**	42
Dismissed/Not Pursued	3	-	-	-	-	3	-	-	1	-	-	6	**13**	36
Withdrawn	3	-	-	1	-	-	1	-	-	-	-	3	**8**	22
Sub-Total	8	-	1	2	-	3	2	1	2	-	-	17	**36**	100

TABLE 14 - Complaints Closed by Disposition, Ground and Provision, 1986/87

This table (which complements table 10) covers complaints closed in terms of:

- type of disposition;
- grounds of discrimination;
- areas of coverage.

Consistent with trends registered in past years, complaints in the area of housing (covering all aspects of purchase or rental of residential or commercial accommodation) registered the highest rate of settlement at 77 per cent. In comparison, complaints in the combined areas of contracts, vocational associations, reprisals and breach of settlement registered the lowest settlement rate at 42 per cent.

TABLE 15 - Complaints Closed by Disposition, Sex of Complainant and Ground, 1986/87

Males					Females			
Withdrawn Nos. %	Dismissed Nos. %	Settled Nos. %	Total Nos.		Total Nos.	Settled Nos. %	Dismissed Nos. %	Withdrawn Nos. %
33 (17)	61 (32)	96 (51)	190	Race	103	67 (65)	23 (22)	13 (13)
2 (6)	16 (52)	13 (42)	31	Ethnic Origin	24	11 (46)	11 (46)	2 (8)
8 (17)	13 (28)	25 (55)	46	Creed	13	10 (67)	1 (8)	2 (25)
12 (21)	9 (16)	37 (63)	58	Sex & Pregnancy	160	107 (58)	28 (26)	25 (16)
- -	1 (25)	3 (75)	4	Sexual Harassment	129	85 (66)	21 (16)	23 (18)
16 (13)	50 (42)	53 (45)	119	Age	69	46 (67)	11 (16)	12 (17)
3 (17)	3 (17)	12 (66)	18	Marital Status	34	24 (70)	2 (6)	8 (24)
2 (14)	4 (29)	8 (57)	14	Family Status	33	25 (76)	1 (3)	7 (21)
36 (12)	57 (19)	202 (69)	295	Handicap	204	140 (68)	26 (13)	38 (19)
- -	2 (29)	5 (71)	7	Public Assistance	16	14 (88)	1 (6)	1 (6)
- -	1 (100)	- -	1	Record of Offences	-	- -	- -	- -
2 (15)	7 (54)	4 (31)	13	Other*	14	8 (57)	2 (14)	4 (29)
114 -	**224** -	**458** -	**796**	**Total ****	**799**	**537** -	**127** -	**135** -
14% -	28% -	58% -	100%	Percentage	100%	67% -	16% -	17% -

* Reprisal/Breach of Settlement/No Ground (Section 33).

** The difference between the totals on this table and on Table 9 represents the Commission-initiated complaints closed this year.

TABLE 15

This table sets out the disposition of cases according to the sex of complainants and to grounds.

TABLE 16 - Employment Complaints Closed by Disposition, Stage of Employment and Ground, 1986/87

Ground:	RACE/COLOUR														
Type of Disposition:	Black	East Indian	Asian	Native Indian	White	RACE - TOTAL	ETHNIC ORIGIN	CREED	SEX	AGE	HANDICAP	OTHERS *	**TOTAL**	% of Sub-Total	% of Total
						RECRUITMENT AND HIRING									
Settled	9	7	1	-	-	17	2	4	46	49	55	21	**194**	69	
Dismissed/Not Pursued	5	7	1	-	-	13	-	5	8	8	11	2	**47**	17	
Withdrawn	3	1	1	-	1	6	1	4	6	3	16	3	**39**	14	
Sub-Total	**17**	**15**	**3**	-	**1**	**36**	**3**	**13**	**60**	**60**	**82**	**26**	**280**	100	23
% of Total	-	-	-	-	-	16	9	27	29	32	19	46			
						TERMINATION									
Settled	39	16	10	2	2	69	7	12	59	41	211	14	**413**	62	
Dismissed/Not Pursued	23	12	1	-	-	36	11	4	12	44	46	3	**156**	23	
Withdrawn	9	4	-	-	-	13	-	4	20	19	37	4	**97**	15	
Sub-Total	**71**	**32**	**11**	**2**	**2**	**118**	**18**	**20**	**91**	**104**	**294**	**21**	**666**	100	55
% of Total	-	-	-	-	-	52	51	40	43	55	66	38			
						DURING EMPLOYMENT									
Settled	22	9	9	-	-	40	7	12	36	14	43	5	**157**	61	
Dismissed/Not Pursued	7	5	3	-	-	15	6	3	15	6	9	2	**56**	21	
Withdrawn	12	3	1	2	1	19	1	1	8	5	12	2	**48**	18	
Sub-Total	**41**	**17**	**13**	**2**	**1**	**74**	**14**	**16**	**59**	**25**	**64**	**9**	**261**	100	22
% of Total	-	-	-	-	-	32	40	33	28	13	15	16			
Total	**129**	**64**	**27**	**4**	**4**	**228**	**35**	**49**	**210**	**189**	**440**	**56**	**1207**	**	100
Percentage	-	-	-	-	-	100	100	100	100	100	100	100			

* Marital status; family status; record of offences.

** The difference between the totals on this table and on table 15 represents the complaints of sexual harassment (Section 6) and Reprisal (Section 7) which are not included here.

TABLE 16 - Employment Complaints Closed by Disposition, Stage of Employment and Ground, 1986/87

This table covers closed employment complaints in terms of:

- type of disposition;
- stage of employment;
- ground of discrimination.

In 1986/87 the majority of the 1,206 closed employment complaints (666 or 55%) dealt with dismissal or constructive dismissal, followed by complaints dealing with hiring (280 or 23%) and with situations arising during employment (261 or 22%). This ranking applies to practically all grounds.

Cases alleging discrimination at hiring stages registered the highest settlement rate (69%) and the lowest dismissal rate (23%), consistent with a trend observed in previous years.

TABLE 17 - Employment Complaints Closed by Type of Work and Ground, 1986/87

Type of Work:	Ground: Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Handicap	Others *	TOTAL	% of Total	1985/86 TOTAL	% of Total
Professional/ Managerial/Technical (Lawyer, Technician, Manager, Teacher, Inspector, Nurse, etc.)	46	5	17	42	8	58	58	15	**249**	18	144	16
Sales (Sales Representative, Buyer, Sales Clerk, etc.)	6	2	3	32	20	21	22	10	**116**	8	115	13
Clerical Typist, Filing/Accounting Clerk, Receptionist, Key Puncher, etc.)	31	7	3	42	28	21	40	11	**183**	14	163	18
Crafts and Foremen/Women (Plumber, Baker, Hairdresser, Lead Hand, Mechanic, etc.)	31	3	4	6	9	27	34	3	**117**	9	56	6
Operatives Punch Press/Lathe/Machine/Crane Operator, Welder, etc.)	29	4	1	15	3	5	71	3	**131**	10	85	10
Services (Waiter/ress, Domestic, Security Guard, Building Superintendent, etc.)	26	5	7	47	41	30	65	19	**240**	18	160	18
Labour/General (Driver, Shipper, Cleaner, Assembly Line Worker, Factory Hand, Labourer, etc.)	60	9	15	28	21	27	139	10	**309**	23	172	19
Total	**229**	**35**	**50**	**212**	**130**	**189**	**429**	**71**	**1345**	**100**	895	100

* Marital status, family status, record of offences and reprisal

TABLE 18 - Cases Closed by Respondents Type of Industry and Grounds, 1986/87

Ground:											1985/86	
Type of Industry:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Handicap	Others *	TOTAL	% of Total	TOTALS	% of Total
Natural Resources	2	-	2	4	3	6	18	1	36	2	17	2
Manufacturing												
Metals/Parts/Machinery	12	2	6	14	14	14	30	2	94			
Food/Tabacco	12	1	1	3	1	5	17	4	44			
Wood/Furniture/Paper	8	3	1	6	3	4	20	1	46			
Automotive/Aircraft	9	1	1	6	1	6	33	2	59			
Electrical	16	-	-	5	4	6	23	1	55			
Other	31	4	4	21	7	20	56	5	148			
Sub-total	88	11	13	55	30	55	179	15	446	27	280	25
Construction	-	-	-	-	1	2	3	1	7	-	15	1
Transportation/Communications/Utilities	20	2	1	3	3	3	15	6	53	3	50	4
Trade and Retail	20	6	11	48	28	22	59	17	211	13	155	14
Finance, Insurance, Real Estate	33	9	6	10	10	26	43	66	203	12	146	13
Community/Business/Personal Services												
Schools/Colleges/Univer.	9	6	1	4	2	23	10	5	60			
Hospitals/Physicians	22	4	12	21	2	7	23	5	96			
Employment Agencies	-	1	-	1	-	2	-	-	4			
Hotels/Restaurants	30	3	3	30	34	20	47	8	175			
Building Services	14	1	2	9	5	4	23	1	59			
Other	27	4	6	29	11	22	50	16	165			
Sub-total	102	19	24	94	54	78	153	35	559	35	352	31
Public Administration	26	7	3	12	3	18	34	13	116	7	114	10
Unspecified & Inapplicable	2	2	-	1	2	1	5	3	16	1	-	-
Total	293	56	60	227	134	211	509	157	1647	100	1129	100

* Marital Status/Family Status/Record of Offences/Reprisal/Breach of Settlement/No Grounds (S.33)

TABLE 17 - (Employment) Complaints Closed by Type of Work and Ground, 1986/87

This table identifies the occupational categories of complainants in employment-related cases, based on grounds of discrimination.

In 1986/87, the largest number of complaints was filed by persons employed in the Labour category, (309 or 23%) followed by those employed in the Professional (249 or 18%) and Services (240 or 18%). The lowest number of complaints came from the Sales (116 or 8%) and Crafts categories (117 or 9%).

TABLE 18 - Cases Closed by Respondent's Type of Industry and Ground, 1986/87

This table details respondents by type of industry, by grounds.

In 1986/87, the majority of complaints occurred in the sectors of Community/Business/Personal Services (559 or 35%) and Manufacturing (446 or 27%), with the other sectors registering lower percentages.

TABLE 19 - Boards of Inquiry Appointed and Completed, 1986/87 (1985/86)

	1986/87	1985/86
Boards Appointed	70	24
Boards Completed:	35	15
Pre-hearing Settlements	6	6
Decisions for Complainant	24	5
Decisions for Respondent	5	4
Board Decisions Under Appeal	16	9

TABLE 19

Appointment of 70 boards of inquiry was requested by the Commission in 1986/87, an increase of 192 per cent over 1985/86. Thirty-five boards of inquiry were completed in 1986/87, an increase of 133 per cent over 1985/86.

TABLE 20 - Inquiries, Voluntary Compliance And Public Education, 1986/87 (1985/86)

Compliance Division	1986/87	1985/86
Inquiries	50,579	47,049
Referrals	16,427	13,343
Informal Resolutions	68	86
Application Form Reviews	562	550
Advertising Reviews	167	187
Exemptions	84	90
Public Education Activities	499	403
Publications Distributed	255,115	349,500

TABLE 20

A comparison of the figures over the two-year period indicates similar levels of activity in all areas.

TABLE 21 - Closed Race Relations Cases, Consultations and Public Education Activities by Sector, 1986/87 (1985/86)

Sector:	1986/87				1985/86				
	Cases				Cases				
	Community Relations Mediations	Community Relations Projects	Consultations	Public Education Activities	Community Relations Mediations	Community Relations Projects	Public Education Projects	Consultations	Public Education Activities
Neighbourhood Relations	31	6	27	2	21	4	0	30	15
Public Services/Facilities	12	1	19	4	24	0	0	19	8
Criminal Justice System	16	6	73	34	11	12	1	37	10
Educational Institutions	11	27	205	109	9	26	2	163	159
The Workplace	12	5	110	18	13	13	1	61	21
Unions	0	3	58	9	0	0	0	20	5
Media	15	8	48	40	6	11	0	50	77
Health/Social Services	1	13	82	30	1	4	0	38	28
Community Organizations	13	23	315	160	24	21	1	360	233
Religious Institutions	3	4	19	13	0	2	0	10	3
Government	4	55	201	49	21	41	1	130	45
Community at Large	4	21	162	66	0	2	0	15	25
Total	122	172	1,319	534	130	136	6 *	933	629

* As of June 1985 Public Education Projects were incorporated into Community Relations Projects.

TABLE 21 - Closed Race Relations Cases, Consultations and Public Education Activities by Sector, 1986/87 (1985/86)

Definition of Activities

Mediations:

Mediation between parties in conflict in order to diffuse situations of racial and ethnic tension at the community and institutional levels.

Projects:

Development or implementation of specific programs or policies designed to improve race relations at the community or institutional level.

Consultations:

Provision of information and advice on race relations issues to individuals and organizations as requested.

Public Education Activities:

Organization or participation in activities designed to heighten public awareness of race related issues and/or the role and mandate of the Race Relations Division and the Ontario Human Rights Commission.

Public Education Projects:

Design and delivery of race relations training programs to community organizations or institutions in order to heighten awareness of various race related issues.

Comments

There were 1,319 consultations in 1986/87, an increase of 41 per cent over the total 933 in 1985/86. This resulted from greater emphasis being placed on consulting with end users and intermediaries in order to promote wider community involvement in the area of race relations.

Public education activities totalled 534, a decrease of 17 per cent over the 629 registered in 1985/86. This reflects the Division's focused strategy of undertaking selected public education projects that are more sustained and broader in scope.

There were 122 community mediations in 1986/87 representing a decrease of 7 per cent against the 130 registered in 1985/86; and 172 community relations projects, representing an increase of 26 per cent over the 136 registered in 1985/86. This shift reflects the Division's strategic change in emphasis to assuming a proactive role in the development of policies and programs in the public and private sectors.

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at March 31, 1987

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